LIST OF CONTENTS

Page

1. Relevant docket entries 2

2. Map of St. Louis by Ward and Precinct Boundaries, July 1961, Board of Election Commissioners for the City of St. Louis 4

3. Letter, Director, Bureau of the Census, January 18, 1967, listing 1960 population of current wards in St. Louis City, Missouri 5

4. Letter to State Senator Robert A. Young from Joe D. Kolb, Chief, Geographical Operations Branch, Bureau of the Census, Jeffersonville, Indiana, February 14, 1967, listing 1960 population for current townships in St. Louis County, Missouri 6

5. Defendants Motion for Approval of Congressional Apportionment and for Termination of Proceedings 7

   Appendix A to Motion, Truly agreed to and Finally Passed House Substitute for Senate Committee Substitute for Senate Bill 182, Seventy-fourth General Assembly of Missouri (Printed at p. 107, Appendices to Jurisdictional Statement. Already printed)

   Appendix B to Motion, Map of Ten Congressional Districts of Missouri as redrawn by 1967 General Assembly 9

   Suggestions in Support of Motion 10

6. Suggestions of Plaintiffs in Opposition to Motion of Defendants 15

7. Transcript of pre-hearing conference of September 26, 1967 21

8. Certificate of September 27, 1967, of Mr. O. F.

Moehle, Director of Elections, Board of Election Commissioners, St. Louis, Missouri (County) 48

9. Stipulation of evidence filed in lower court on October 12, 1967 50

10. Transcript of hearing before lower court on October 23, 1967 54

11. Deposition of Omer H. Avery filed with the lower court on October 23, 1967 109
Defendants' [deposition]

Exhibit B—Map of St. Louis [City] by ward and precinct boundaries, 1966. Board of Election Commissioners for the City of St. Louis with current ward populations based on 1960 census 129

Exhibit C—Map of Kansas City wards, 1965, Board of Election Commissioners, Kansas City, Missouri, with current ward populations as estimated by Kansas City Board of Election Commissioners 130

Exhibit D—Map of City and County of St. Louis, townships with Wunnenberg Engineering Company, showing current county townships and township populations based on 1960 Census 132

12. Decision, Judgment and Order of Lower Court, December 29, 1967 (Printed at pages 1-98, Appendices to Jurisdictional Statement. Already printed)

13. Defendants' Motion to Stay Order, Judgment and Decree Pending Appeal 133

14. Statement in Support of Defendants' Motion to Stay Order, Judgment and Decree Pending Appeal 135

15. Defendants' Notice of Appeal to the Supreme Court of the United States 141

16. Plaintiff's Memorandum in Opposition to Defendants' Motion to Stay Order, Judgment and Decree, Pending Appeal 145

17. Intervenor-Defendant's Notice of Appeal to the Supreme Court of the United States 149

18. Intervenor-Defendants' Motion to Stay Order, Judgment and Decree Pending Appeal with suggestions in support 152

19. Memorandum and Order on Pending Motions to Stay, January 30, 1967 (Printed at pages 99-106, Appendices to Jurisdictional Statement. (Already printed)

20. Map of Missouri with population of counties, 1960 Census and congressional districts of 1967 Missouri Congressional Districting Act showing district populations (H.P. Exhibit D) 155

NOS. 1116 AND 1117

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

JAMES C. KIRKPATRICK, Secretary of State of Missouri, and NORMAN H. ANDERSON, Attorney General of Missouri,
Appellants (No. 1116),
and
F. V. HEINKEL, R. J. ROSIER, et al.,
Appellants (No. 1117),
vs.
PAUL W. PREISLER, LOUISE ERBE, et al.,
Appellees.

On Appeal from the United States District Court For the Western District of Missouri, Central Division.

Appeal Docketed February 14, 1968.
Probable Judisdiction Noted March 4, 1968.
APPENDIX (Rules 17 and 36).

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

PAUL W. PREISLER, et al.,
Plaintiffs,
vs.
THE SECRETARY OF STATE OF MISSOURI and THE ATTORNEY GENERAL OF MISSOURI,
Defendants,
and
F. V. HEINKEL, et al.,
Intervenor-Defendants.
} No. 1064.

RELEVANT DOCKET ENTRIES.

1. September 1, 1967.—Defendant's Motion for Approval of Congressional Apportionment and for Termination of Proceedings, with Suggestions in support thereof filed.

• • •

2. September 18, 1967.—Suggestions of Plaintiffs in Opposition to Motion of Defendants—filed.

3. October 6, 1967.—Transcript of Pre-Hearing Conference of September 26, 1967—filed.

4. October 12, 1967.—Stipulation of Evidence—filed (With Exhibits).

• • •

5. October 23, 1967.—The case is called for a hearing before Judge Matthes, Judge Oliver and Judge Collinson, Judge Matthes; Presiding. Parties appear by counsel and announce ready for the hearing. Defendants introduce testimony and rest. The plaintiffs present evidence (exhibits) and rest.

• • •

6. October 31, 1967.—Transcript of Proceedings held on October 23, 1967—filed.

• • •

7. December 29, 1967.—Judgment & Decree—filed.

• • •

8. January 12, 1968.—Defendant's Motion to Stay Order, Judgment and Decree Pending Appeal—filed. Statement in Support of Defendants' Motion to Stay Order, Judgment and Decree Pending Appeal—filed.

Defendants' Notice of Appeal to the Supreme Court of the United States—filed.

9. January 18, 1968.—Plaintiffs' Memorandum in Opposition to Defendant's Motion to Stay Order, Judgment and Decree, Pending Appeal—filed.

10. January 22, 1968.—Intervenor-Defendants' Notice of Appeal to the Supreme Court of the United States—filed.

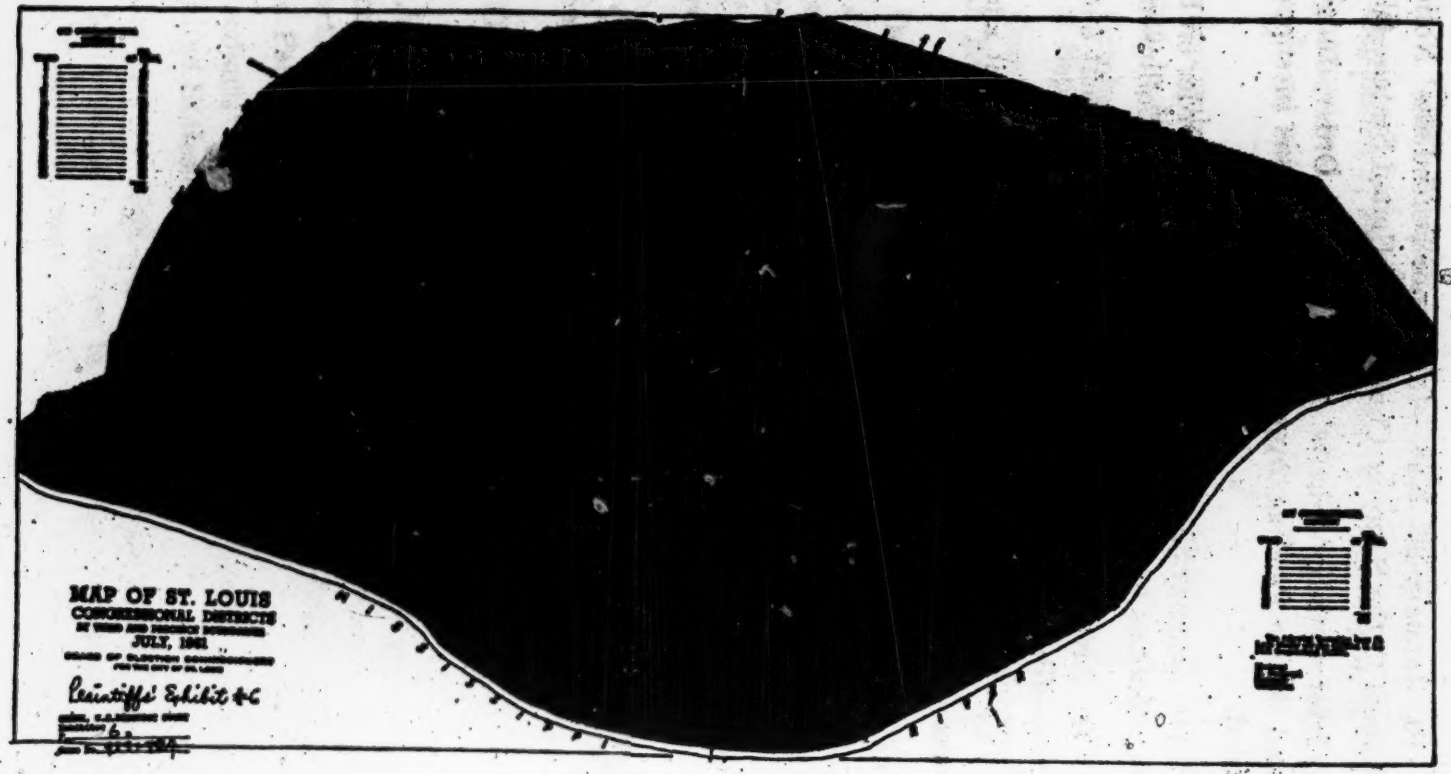
Intervenor-Defendants' Motion to Stay Order, Judgment and Decree Pending Appeal with suggestions in support—filed.

11. January 30, 1968.—Memorandum and Order on Pending Motions to Stay—filed (Judges Oliver & Collinson).

12. January 30, 1968.—Order to Stay Judgment and Decree—filed (Judge Matthes).

13. January 30, 1968.—Order Staying Judgment and Decree—filed (Judge Matthes).

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION



IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

EXHIBIT NO. 18

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS
WASHINGTON, D.C. 20233

OFFICE OF THE DIRECTOR

January 18, 1967

City of St. Louis
Population by Wards *

Ward	1960 Population
1	19,462
2	30,372
3	36,622
4	25,151
5	37,588
6	18,595
7	47,106
8	29,171
9	32,602
10	23,971
11	28,683
12	20,891
13	20,624
14	20,281
15	25,214
16	15,470
17	33,883
18	25,701
19	31,441
20	25,030
21	22,920
22	29,148
23	24,876
24	22,651
25	29,349
26	25,635
27	19,928
28	27,622

* Source: 1960 Census of Population and Housing, City Blocks, St. Louis, Missouri, Series HC(3)-232

(The population totals for wards were compiled from the reported totals by blocks. The sum of these figures for wards is 39 people less than the total given in Vol. I for St. Louis. This difference results from a number of technical factors in the processing of the data. It has no effect on relative standing of the wards.)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

EXHIBIT NO. 23

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

February 14, 1967

IN REPLY REFER TO
JEFFERSONVILLE CENSUS OPERATIONS OFFICE
1201 East 10th Street
JEFFERSONVILLE, INDIANA
47130

Honorable Robert A. Young
State Senator
State House
Jefferson City, Missouri 65101

Dear Mr. Young:

This will confirm your telephone conversation with Mrs. McKeown of this office.

The following are the 1960 population figures for the present townships in St. Louis County, Missouri:

Township	1960 Population
Airport	68,480
Bonhomme	53,779
Clayton	51,092
Concord	36,273
Creve Coeur	48,661
Ferguson	34,229
Florissant	41,084
Gravois	52,206
Hadley	24,720
Jefferson	35,649
Lemay	40,095
Lincoln	22,380
Meramec	9,528
Midland	50,417
Normandy	37,673
St. Ferdinand	66,420
Spanish Lake	11,522
Washington	19,304
Total	703,532

Please feel free to call us at any time if additional information is needed.

Sincerely yours,

Joe D. Kolb

Joe D. Kolb, Chief
Geography Operations Branch
Jeffersonville Census Operations Office

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

MOTION FOR APPROVAL OF CONGRESSIONAL APPORTIONMENT AND FOR TERMINATION OF PROCEEDINGS.

Defendants move the court as follows:

1. The court's opinion, judgment and decree issued in this cause on August 5, 1966, found that the 1965 Missouri Congressional Redistricting Act, Sections 128.202 to 128.305, RSMo, did not comply with Article I, Section 2, of the Constitution of the United States and was, therefore, unconstitutional and void. The court retained jurisdiction of this case for the purpose of reviewing any new congressional redistricting plan that might be enacted by the General Assembly of Missouri and signed by the Governor.

2. Pursuant to the opinion, judgment and decree of the court aforesaid, the 74th General Assembly of the State of Missouri enacted House Substitute for Senate Committee Substitute for Senate Bill No. 182, which enactment was signed into law by the Governor of Missouri and a copy of which is appended hereto as Appendix A. Said law is popularly known as the 1967 Congressional Redistricting Act. Said law divides the State of Missouri into ten congressional districts and becomes effective October 13, 1967, by operation of law.

3. The congressional districts established as aforesaid comply with the command of Article I, Section 2, of the Constitution of the United States. An ideal average district would include 431,981.3 population in each of the ten districts. The largest of said districts is district number 2 with

a population of 442,302. The smallest of said districts is district number 4 with a population of 423,815. Attached hereto as Appendix B is a map of the State of Missouri reflecting the geographical boundaries of the districts together with the population of each district. All of the population figures referred to in this paragraph are based upon the United States Census for 1960.

WHEREFORE, Defendants pray that the court enter its order approving the 1967 Congressional Redistricting Act for the State of Missouri; that the court enter its order discharging defendants from further process in this cause; and that the court enter its order terminating these proceedings.

Respectfully submitted,

NORMAN H. ANDERSON
Attorney General

By /s/ THOMAS J. DOWNEY
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri
Attorneys for Defendants.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

APPENDIX B

The Ten CONGRESSIONAL DISTRICTS of Missouri

(As Redrawn By The 74th General Assembly - 1967)

CONGRESSIONAL DISTRICT POPULATION

DISTRICT 1 - 436,417
DISTRICT 2 - 442,302
DISTRICT 3 - 431,507
DISTRICT 4 - 423,815
DISTRICT 5 - 430,412
DISTRICT 6 - 425,238
DISTRICT 7 - 436,769
DISTRICT 8 - 439,984
DISTRICT 9 - 428,223
DISTRICT 10 - 423,866

(TITLE OMITTED IN PRINTING)

SUGGESTIONS IN SUPPORT OF MOTION FOR APPROVAL OF CONGRESSIONAL APPORTIONMENT AND TERMINATION OF PROCEEDINGS.

I.

This case is before the court upon the complaint of plaintiffs that the 1965 Missouri Congressional Redistricting Act was unconstitutional for the reason that the population of the ten congressional districts established by the Act violated the constitutional principle of "one man—one vote". The Supreme Court of the United States in Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481, held that as nearly as is practicable, one man's vote in a congressional district is to be worth as much as another's. This court held that the Act in question did not comply with Article I, Section 2, of the Constitution of the United States as construed by Wesberry v. Sanders, supra, and was, therefore, unconstitutional and void; 257 F.Supp. 953.

An appeal from the opinion, judgment and decree of this court was taken by defendants to the Supreme Court of the United States. On January 9, 1967, the judgment of this court was affirmed by per curiam decision of the Supreme Court; Kirkpatrick, et al. v. Preisler, et al., 385 U.S. 450, 17 L.Ed.2d 511.

The decision of this court retained jurisdiction of this matter as follows, 257 F.Supp. l.c. 982:

> "* * * We shall retain jurisdiction of this case for the purpose of reviewing any new congressional redistricting plan that may be enacted by a future General Assembly of Missouri and signed by the Governor.
>
> "If we find that such new legislation is consistent with the constitutional command of Art. 1, § 2, this case

would then be reopened and our decree will be set aside.

"If we should find otherwise, the congressional elections for Missouri will be ordered conducted at large until new and constitutional districts are created."

The retention of jurisdiction in the court's judgment and decree is stated as follows, 257 F.Supp. l.c. 985:

"Fourth: The Court retains jurisdiction of this cause for such other and further orders as may be appropriate and required.

"Fifth: This judgment and decree is final; jurisdiction being retained solely for the purpose of enabling the Court to reopen this case on appropriate motion by any party for the purpose of presenting for the Court's future consideration the constitutionality of any subsequently enacted legislation relating to Congressional Redistricting for the State of Missouri that may in the future become the law of Missouri.

"It is so ordered."

Therefore, it is clear that the court has jurisdiction to entertain plaintiffs' motion.

II.

Pursuant to the decision of this court as affirmed by the Supreme Court of the United States, the 74th General Assembly of the State of Missouri enacted a new Congressional Redistricting Act establishing ten new congressional districts in the State of Missouri. The Act was signed into law by the Governor of the State of Missouri and will become effective by operation of law on October 13, 1967. A copy of this law is appended to plaintiffs' motion as Appendix A. There is also appended to plaintiffs' motion as Appendix B a map of the State of Missouri reflecting the geographical boundaries of the new congressional districts, together with a table reflecting the population of each of the ten new con-

gressional districts according to the United States Census for 1960.

It appears to plaintiffs that the opinion of this court in regard to permissible population variations in congressional districts is summarized by the court in the following language, 257 F.Supp. 973:

> "[5] The basic constitutional principle of equal representation established by Art. 1, § 2 forbids and eliminates, so far as congressional representation is concerned, the consideration of any factor other than population. Use of such words as 'feasible' and 'practicable' in a careful statement of the fundamental constitutional principle constitutes but a recognition that the familiar doctrine of de minimis is applicable and is designed to make clear that a State legislature would not be expected to create entirely new political subdivision lines in order to have absolute and precise mathematical equality in its congressional districts.
>
> "Various courts other than the Supreme Court have stated the basic constitutional principle of equal representation applicable to congressional districting in words as unequivocal as those used repeatedly in Wesberry v. Sanders.
>
> "For example, Calkins v. Hare, E.D. Mich. 1964, 228 F.Supp. 824 at 829, in which it was held that '[o]ne factor and one alone is controlling, the factor of population.' Meeks v. Anderson, D.Kan. 1964, 229 F.Supp. 271 at 273, held that 'one factor, and only one, may be taken into account in apportioning and establishing the congressional districts among the people of a state and that factor is population.' And Bush v. Martin, supra, subsequently affirmed by the Supreme Court, in addition to what has already been quoted, stated the applicable con-

stitutional principle still another way: 'Members of Congress are to be elected on the basis of population and nothing else' (224 F.Supp. at 511)."

In Swann v. Adams, 385 U.S. 440, 17 L.Ed.2d 501, the Supreme Court of the United States appeared to emphasize the adherence to de minimis population variations in state legislative schemes. The court held that population variations in excess of de minimis deviations must be minor and must be based on legitimate considerations incident to the effectuation of a rational state policy. Although Swann v. Adams, supra, was concerned with state legislative apportionment, in Duddleston v. Grills, 385 U.S. 455, 17 L.Ed.2d 508, the court remanded a congressional redistricting case from Indiana to the lower court for further consideration in light of Swann v. Adams, supra.

It is plaintiffs' contention that the districts resulting from the 1967 Congressional Redistricting Act comply with the doctrine of de minimis in regard to population variations between the districts. Although this court has condemned mathematical arguments to justify population variations in congressional districts (257 F.Supp. l.c. 973, et seq.), plaintiffs believe that a reference to certain mathematical factors will reflect that population variations in the congressional districts in question are de minimis. The population of the State of Missouri according to the 1960 Census was 4,319,813. Thus, if the ten districts embraced population of aboslute equal weight, each district would have a population of 431,981.3.

Under the 1967 Congressional Redistricting Act the largest district is district number 2 with a population of 442,302. District number 4 is the smallest district with a population of 423,815. Thus, the largest district has a population of 18,487 in excess of the smallest district. The ratio of the largest district to the smallest district is 1.04.

The de minimis nature of the population variations may also be measured by comparing the largest district with the average ideal district. District number 2 has a population of 442,302. The average ideal district would be composed of a population of 431,981. Thus, the largest district has a population of 10,321 in excess of an average ideal district. This represents a population in the largest district of 2.38 per cent in excess of an average ideal district.

The de minimis nature of the population variations is also demonstrated by a comparison of the smallest district with the average district. District number 4, with a population of 423,815, is the smallest district. In comparison with an average district it has a population of 8,166 less than such average district. Stated in another manner, the population of the smallest district is 1.89 per cent less than an average ideal district.

The 1967 Congressional Redistricting Act of Missouri complies with the opinion, judgment and decree of this court and with the command of Article I, Section 2 of the Constitution of the United States in regard to equality of population among the various districts. Therefore, plaintiffs' motion should be granted.

Respectfully submitted,

NORMAN H. ANDERSON
Attorney General

By /s/ THOMAS J. DOWNEY
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri
Attorneys for Defendants.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

SUGGESTIONS OF PLAINTIFFS IN OPPOSITION TO MOTION OF DEFENDANTS.

I

Plaintiffs oppose the motion of Defendants which prays that the court ". . . enter its order approving the 1967 Congressional Redistricting Act for the State of Missouri; that the court enter its order discharging defendants from further process in this cause; and that the court enter its order terminating these proceedings."

Plaintiffs contend that the 1967 Congressional Redistricting Act (House Substitute for Senate Committee Substitute for Senate Bill 182; copy of which is "Appendix A" of Defendants' Motion) does not comply with the provisions of Article I, Section 2 of the United States Constitution, because the populations of the districts are not as nearly equal as is practicable since the differences between district populations are substantial, not trivial, and because the differences could have been greatly reduced by simple transfer of existing political units from one district to an adjacent district.

Plaintiffs pray the Court to overrule Defendants' motion and to find that the 1967 Congressional Redistricting Act to be unconstitutional and void and to order that the elections for Representatives in Congress be conducted at large until new constitutional districts are created, and further that the Court retain jurisdiction of this cause for such other and further orders as may be appropriate and required.

The Court, in **Preisler et al., v. Secretary of State of Mis-**

sourl, et al., 257 F.Supp. 953, has extensively discussed the constitutional issues pertaining to Congressional Representative Districting and the judicial constructions and determinations applicable thereto. Applying the findings of law as set forth in this case to the 1967 Redistricting Act, Plaintiffs contend that the conclusion is inescapable that the 1967 Redistricting Act is unconstitutional and void.

II.

The district population data presented by Defendants in their "Appendix B" has been recalculated by Plaintiffs using the official census data in evidence in this case and significant mistakes have been found.

The sum of the district population of Defendants' table is 4,318,533, whereas the census figure is 4,319,813; this is a discrepancy of 1,280. The Seventh District is correct, 436,769; Defendants' Tenth District figure is 423,866, whereas the census figure is 423,868 making Defendants' low by 2, which difference is trivial; Defendants' Sixth District figure is 425,238, whereas the census figure is 422,238 making Defendants' too high by 3,000. This is a significant and substantial discrepancy which makes the Sixth District the lowest in the State that can be precisely calculated; and, although the Fourth and the Fifth cannot be separately calculated, the sum of the population of the Fourth plus the Fifth can be calculated. This sum for Defendants' district populations is 854,227, whereas the census figure is 850,899 making Defendants too high by 3,328. This too is a significant and substantial discrepancy. The remaining districts have not been calculated by Plaintiffs because complete population data of townships, wards, and precincts, is not readily available because some of the boundaries of these political subdivisions have been redrawn since the 1960 Census and the General Assembly has obviously used the new boundaries. Thus the difference between the highest

district (Second), using the Defendants' figure of 442,302 and the lowest district (Sixth) using the census figure of 422,238, is 20,064. The discrepancy between the highest and the lowest districts might even be greater depending upon how the 3,328 discrepancy of the sum of the Fourth and the Fifth is distributed between these two Districts.

The sum of the foregoing significant and substantial discrepancies (of Districts Four plus Five, and Six) of Defendants' figures amounts to 6,328. Defendants' figures when lowered to the census figures will necessitate Defendants' remaining district figures to be increased in order to account for the total population of the State, possibly even increasing the maximum difference between the highest and lowest district.

III.

The map of the districts created by the Act, which map Defendants present to the Court as "Appendix B" of Defendants' Motion, when county and township populations are appended thereto, will show on its face that several of the districts could have very easily been made more equal by the simple expedient of the transfer of existing political subdivisions from one district to an adjacent district.

The General Assembly in creating the districts has utilized whole counties, townships, wards, precincts of townships, and precincts of wards. With such low population political subdivisions available through the State, there is no excuse for failing to make the districts closer to equality of population than the district populations shown in the aforesaid "Appendix B" or Appendix B as corrected above.

In presenting the following examples to the Court showing that the populations of the districts could easily have been made closer to equality, Plaintiffs do not suggest that these particular changes must be the specific changes made,

but simply to prove that the General Assembly did not comply with constitutional provisions of Article I, Section 2 and might without difficulty have complied.

The district populations below are from "Appendix B" of Defendants' Motion and the population of counties and townships from the bulletin, "U.S. Bureau of the Census. **U.S. Census of Population: 1960. Number of Inhabitants, Missouri.** Final Report PC(1)-27A." in evidence in this case.

(1) District Eight with population of 439,984 is 16,118 greater than the adjacent District Ten with 423,866. If Dent County, 10,445, were transferred from District Eight to District Ten, the new Eighth would have 429,539 and the new Tenth 434,311, a significant improvement over the original district populations.

(2) If such change as suggested in (1) is considered undesirable because it might raise the question of making the Eighth less compact and thereby possibly violating the provisions of Article III, Section 45 of the Missouri Constitution as to compactness of districts, then instead the nine southernmost townships of Texas County, whose aggregate population is 7,742 (Morris, Cass, Carroll, Ozark, Clinton, Burdine, Sargent, Pierce, and Date townships; see bulletin PC(1)-27A, pages 27-5 and 27-23) could be transferred to the Tenth with greater approach to the average of 431,981 than in the shift suggested in (1) for this new Eighth would have 432,242 and the new Tenth would have 431,608. Closer approach to population equality is thus easily attainable! In this instance compactness would also be improved.

(3) Another obvious transfer is to shift Hickory County, 4,516, from District Seven with population of 436,769 to the adjacent District Four with population of 423,815, making the new Seventh 432,253 and the new Fourth 428,331, both

new districts being significantly closer to the average of 431,981.

(4) When the districts are examined which are in or extend into the City of St. Louis or St. Louis County, the First, Second, Third, Eighth and Ninth, it is obvious that a shift of a few of the existing precincts in this populous area would easily produce districts with much closer approach to equality, or the average, as now exists. A map of this area is attached hereto "Plaintiffs' Exhibit A".

The changes described indicate that the General Assembly did not create districts as nearly equal in population as it might have easily created by a few obvious shifts of existing political units between adjacent districts. To permit significant population differences to remain, when smaller differences could be easily attained, is not permissible under the constitutional provisions of Article I, Section 2. Many other possible changes which would bring the districts closer to the population average without much disturbance of the general district boundaries or areas can be discovered upon examination of the map and population tables; the selection of the particular changes are, of course, within the discretion of the General Assembly.

Sufficiently close and easily attainable population equality of the districts has not been accomplished in the 1967 Congressional Redistricting Act by the General Assembly, therefore, the districts are unconstitutional and void and should be so declared by the Court and the election ordered to be conducted from the State at large.

IV.

The Governor of Missouri is empowered by Article IV, Section 9 of the Missouri Constitution to convene the General Assembly on extraordinary occasions. The Governor has indicated in the public press that he intends to so con-

vene the General Assembly in January 1968 for certain matters.

Plaintiffs request the Court for an early determination of the issues involved in Defendants' Motion and related matters in this cause so that, if the Court finds that the 1967 Redistricting Act is unconstitutional and void, the Governor could include congressional districting as a matter he deems necessary for action by the General Assembly in his call for convening the extra session.

The General Assembly in such extra called session, assuming that it is convened in January 1968, should be able to complete any districting act in ample time before the last filing date for candidates for the primary election, April 30, 1968.

V.

WHEREFORE, Plaintiffs pray the Court to overrule Defendants' Motion and to find that the districts are unconstitutional and void, to order that the congressional elections for Missouri be conducted at large until new and constitutional districts are created, and to retain jurisdiction of this cause for such other and further orders as may be appropriate and required.

VI.

Plaintiffs request oral argument on Defendants' Motion and upon the related matters raised by said motion contained in the decree and order of the Court in this cause.

Respectfully submitted,
/s/ PAUL W. PREISLER
Attorney for Plaintiffs
4274 Shenandoah Avenue
St. Louis, Missouri 63110
314-664-8530

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

TRANSCRIPT OF PROCEEDINGS.

Be it remembered that heretofore on Tuesday, the 26th day of September 1967, the above-entitled cause came on for conference in chambers, before the Honorable John W. Oliver, Judge of Division One of the above court, sitting at Jefferson City, Missouri, and the following proceedings were had and entered of record:

The plaintiffs were represented by Mr. Paul W. Preisler, Attorney at Law, 4274 Shenandoah Avenue, St. Louis, Missouri.

The defendants were represented by Mr. Thomas J. Downey, First Assistant Attorney General, and Mr. Loren Wood, Assistant Attorney General, Office of the Attorney General, Jefferson City, Missouri.

The Intervenor-Defendants were represented by Mr. David Collins, of the law firm of Edwards, Hess & Collins, Macon, Missouri.

* * *

(Whereupon, at 9:00 A.M., the following proceedings were had in court chambers:)

THE COURT: Let the record show that the conference today convened was pursuant to the notice that went forward from my law clerk on September 19, 1967, to counsel for the plaintiff, the defendants and the intervenors, that letter having been sent from Kansas City after a conference held in St. Louis that day during the Eighth Circuit Judicial Conference with Circuit Judge Mathes and District Judges Oliver and Collinson.

I might also state for the record that immediately upon the filing of the motion by the Attorney General, I called Chief Judge Vogel of the Eighth Circuit to make inquiry whether the composition of the three-judge court would be the same. He advised me that it would be because the three-judge court had retained jurisdiction of this cause, and asked me to so advise Judge Mathes and Judge Collinson, which I did.

A very informal discussion and a short informal discussion with counsel suggested that it is agreeable to everyone that the Court first state the posture of the case and then we discuss on the record and off the record some of the problems that relate to the factual data that can be stipulated in this case in its present posture.

The files and records in the case will show that on August 5, 1966, the three-judge Court, composed as I have stated, rendered its decision as reported in 257 F.Supp., Page 953, and also issued its judgment and decree as that judgment and decree appears on Page 984 of 257 F.Supp.

In that case the 1965 Missouri Congressional Redistricting plan was held to be constitutionally void. It was secondly held that the plaintiffs' prayer for relief should be and was granted. Thirdly, that because of circumstances with which counsel are familiar and as worked out in the initial pretrial of that case, the 1966 elections were held not to be affected by the Court's decree, it being anticipated that the General Assembly of Missouri would endeavor to enact a plan consistent with the command of the Constitution of Missouri and the Constitution of the United States.

Jurisdiction of the case was retained and the fifth paragraph of the judgment and decree provided that the judgment and decree was final in order to avoid any possible question of appellate review, jurisdiction being retained

solely for the purpose of enabling the Court to reopen this case on appropriate motion by any party for the purpose of presenting for the Court's future consideration the constitutionality of any subsequently enacted legislation relating to congressional redistricting for the State of Missouri that may in the future become the law of Missouri.

An appeal was perfected from that three-judge judgment to the Supreme Court of the United States on September 1, 1966, and on January 9 the Supreme Court of the United States affirmed in a single sentence opinion now officially reported in 385 U.S. 450. The Supreme Court of the United States returned its mandate on February 8, 1967, returning jurisdiction of the case to this Court.

On September 1, 1967, the files and records will show that the Attorney General of Missouri filed a motion for approval of congressional apportionment and for termination of proceedings, and also filed suggestions in support of that motion.

Very briefly, and I think sufficiently for this preliminary statement of the record, the motion alleges that the General Assembly of Missouri enacted House Substitute for Senate Committee Substitute for Senate Bill No. 182, a copy of which is attached to the motion of the Attorney General as Exhibit A, that bill having been signed by the Governor and therefore enacted into law.

The Attorney General alleges in his motion that the congressional districts established by that bill do comply with the command of Article I, Section 2, of the Constitution of the United States, and in Paragraph 3 of the motion attaches as Exhibit B a map of the State of Missouri reflecting the geographical boundaries of the districts together with the population purportedly within each of the ten districts.

Now, although the Attorney General's motion alleges that,

"All of the population figures referred to in this paragraph are based upon the United States census for 1960," it is obvious, as we have noted off the record, that the total population allocated to the various ten districts do not in fact add up to the undisputed and stipulated fact that the population of Missouri, in accordance with the 1960 census, was 4,319,813; the figures add up to 4,318,533.

The problem is therefore presented, and one that we will explore thoroughly by informal discussion, which, of course, is a part of the pre-trial procedures, but to reduce the formal court record I will follow my usual practice of attempting to summarize whatever conclusions we may arrive at, simply to cut down the amount of reporting necessary to make the record accurately reflect the agreements and understandings and directions that may be made.

The Attorney General's basic theory seeking affirmative action from this three-judge court is predicated upon the contention set forth on Page 4 of the Attorney General's motion, in which it is suggested that the districts resulting from the 1967 Congressional Redistricting Act comply with the doctrine of de minimis in regard to population variations between the districts.

Within time extended under the local rule, the plaintiffs have filed a response and suggestions in opposition to the Attorney General's motion. Those suggestions direct attention to the apparent inaccuracy of the map attached to the Attorney General's motion and also place in issue the allegation that the population variations are within the doctrine of de minimis but that the variations are substantial and that a more practicable apportionment could have been made, illustrating this point by several examples of where the shift of a single county between two adjoining districts would have brought both districts closer to the average

dictated by the mathematics of dividing ten into the total population.

Now, let me inquire of counsel whether I have correctly stated where our present posture is, as reflected by the files and records in the case at this point. Let me inquire of Mr. Preisler whether this is a fair statement as far as it goes?

MR. PREISLER: You stated, Judge, that the map was objected to. It was really the populations accompanying the map is the primary difficulty. The map, as far as the State itself goes, and the out-state areas, is essentially correct. It is the figures.

THE COURT: The figures on the map. When I say map, you mean Exhibit B, and I think the record will also show that even in adding up the identifiable counties within a particular district, that the Exhibit B does not accurately reflect the population figures established by the stipulated evidence in this case; there being variations, as I recall, of as much as two or three thousand votes in adding up particular districts.

Other than that suggestion is the statement satisfactory to plaintiffs?

MR. PREISLER: Yes.

THE COURT: Any additions or corrections, Mr. Downey, or does this correctly state—

MR. DOWNEY: Again one slight correction, Judge. I believe the variations will show a difference of two or three population rather than votes.

THE COURT: Yes, and we will get into the details just exactly where the figures do not gibe and attempt to find out what figures the Legislature in fact did use, what articulation, if any, the Legislature made in using figures other

than the 1960 census, and I will attempt to summarize for the record as we get into this exactly what our factual situation is and what solution we can agree on to have accurate figures in which we may work.

Ather than the suggestion you have made, Mr. Downey, is the Court's description of our present posture accurate?

MR. DOWNEY: I agree with the Court's description, Your Honor, and at the appropriate time I would like to state for the record the source of the map that was appended to our motion.

THE COURT: I think it might be well to state that now and we won't have to repeat it. Would you state where Exhibit B came from?

MR. DOWNEY: Yes, Judge, when we were preparing this motion, I checked with the Office of the Secretary of State in an attempt to get an official map, and official population figures for these districts, the new districts. The Secretary of State had prepared a map together with population figures for inclusion in the next publication of the Blue Book, the Blue Book being the official manual of the State of Missouri.

Material for the Blue Book had already gone to the printer. A copy of the map and the population figures had not been retained in the Office of the Secretary of State. However, I was informed that there was on file in the Office of the Secretary of State a map with population figures which the staff of the Secretary of State's office thought corresponded with the official map that is being included in the Blue Book.

I was told that the source of this map was the Missouri State Chamber of Commerce, and a copy of that map was made available to me. Upon receiving the map, I checked with the Missouri State Chamber of Commerce in an at-

tempt to determine the source of the population figures that had been used on the map. I was informed by the Offices of the Missouri State Chamber of Commerce that the map came from newspaper sources, that the Capitol Press corps had used these figures in reporting the enactment of their legislation.

It was suggested to me that the Jefferson City reporter for the Kansas City Star would be able to furnish me the source of this information; specifically, Mr. Henry Clay Gold. So I checked with Mr. Gold in regard to the source of the population information, and Mr. Gold informed me that these figures came from the House Committee and the Senate Committee that had done the basic work on this legislation. I also checked with Mr. Jones of the St. Louis Globe Democrat who also informed me that these population figures came from the Committee sources that were referred to me by Mr. Gold.

THE COURT: May I interrupt you? Were you able to get any working papers from the House Committee or the Senate Committee that were retained and any maps that they may have used?

MR. DOWNEY: Judge, I did not attempt to do so, for this reason. The Chairman of the Senate Committee lives in Troy, Missouri. The Chairman of the House Committee lives in New Madrid, Missouri. The Legislature is not in session and was not in session at the time I prepared my motion, and I was sufficiently satisfied with the reliability of the population figures that I though for the purpose of getting this case underway again, that verification could come at a later date for verification. The committees do not maintain any staffs and they do not have offices that are open except during the regular session of the General Assembly.

Now, even during the regular session of the General As-

sembly, the Committees do not maintain working staffs. Their staffs are entirely secretarial and clerical.

THE COURT: Do they maintain any official files that reflect the transaction of the State's business?

MR. DOWNEY: To my knowledge—now, there again I am speaking from information and belief, the only files that are maintained are the personal files of the committee chairmen of the two committees.

THE COURT: Was the Attorney General's office in consultation with members of the General Assembly and its committees during the reworking of the third attempt on reapportionment?

MR. DOWNEY: Not—we had nobody assigned to the committee as such. It was not requested of the Attorney General's office, and we are very careful not to interpose ourselves to in any way upset the delicate balance between the legislative and executive departments of the Government, and we felt that our position should be to take a standby position and that we would thoroughly advise with the committees if consultation was requested. Consultation was not requested generally during the work of the committees. There were several times during the legislative session when we were asked specific questions and we advised on specific questions.

THE COURT: I take it then that you have no files that could be called official files that would be within an official record admissibility requirement, an official file kept by your office in connection with this matter?

MR. DOWNEY: We do not have, Judge.

THE COURT: And you have stated for the record your full information as to where Exhibit B came from?

MR. DOWNEY: Yes, Judge.

THE COURT: Thank you.

MR. DOWNEY: I might just include by referring, Judge, to the map that appeared in the Kansas City Star on July 5, 1967, which was the week following the close of the General Assembly. This particular bill that we are talking about was enacted, oh, I believe on Thursday of the last week of the General Assembly. The General Assembly adjourned on Friday night, and this map appeared on July 5, and the population figures reflected on the map are identical with the ones that we have appended to our motion.

The arrangement of the population figures is not the same. In other words, it is not in tabular form. They are attached to the individual districts, but the population figures were identical.

THE COURT: Mr. Collins, do you have any additional information or does the Court's statement correctly phrase our problem?

MR. COLLINS: I think it does, Your Honor. I have nothing in addition.

THE COURT: Mr. Preisler, did you have an additional comment to make on the record? I am about to suggest that we get off the record and see how we can really get down to obtaining agreement on what cannot, as I see it, be any real dispute about what the facts are.

MR. PREISLER: May I point out that the bill that was finally passed, as a House bill, not a House Committee bill, as is sometimes finally presented to both houses of the Legislature, also—

THE COURT: Now, wait a minute. Let me see the point that you are making there. Exhibit A I described from the

motion of the Attorney General, and printed on this bill—and I assume we will have all of the various bills in evidence before we end today—has on the top of it, "Truly agreed to and finally passed," and it is described as the House Substitute for Senate Committee Substitute for Senate Bill No. 182.

MR. PREISLER: My point is that this is not a House Committee bill, but a House bill itself. I am speaking of the bill that is finally passed. Therefore, I will say the House Committee bill, if it is authentic, is not as weighty as it would be as if it had come out as a House bill specifically with the figures attached.

The other fact is this, that nowhere in the statement of the Attorney General, which I am sure is correct, does it state whether or not this particular set of figures that they got—at what state of the development of the map and the figures it came. We don't know at what particular stage the press might have been handled by some member of the committee or the chairman of the House or Senate committee. They change from minute to minute, almost.

THE COURT: Well, gentlemen, won't some of this clarify itself when we have in this record the first bill that was introduced either in the House or the Senate, and how that legislative history progressed by the substitution by committee of these particular bills in much the same manner that we found this legislation having been enacted in 1965.

We had in that record each and all of the bills; indeed the three-judge opinion, consistent with the practice and procedures and rules of decision and rationale of other three-judge courts made reference to that legislative history in making judgment on the 1965 redistricting bill.

Now, I quite agree with you that there is a possibility that a newspaper reporter attempting to keep up with enact-

ment of legislation in the closing days of a session—as I recall, the '65 legislation passed on the last day, didn't it?

MR. DOWNEY: Right at the stroke of midnight, Judge.

THE COURT: Toward midnight on the last day. The present legislation beat that by one day, as I understand the Attorney General's statement. But I have no idea of the substitutions that were made, but I think it quite possible that the newspaper reporter may have taken figures or made calculations off of some bill that was in the process of being changed back and forth.

I am not of the judgment that anyone is going to contend that the population figures published by any newspaper or by a Chamber of Commerce or anyone else is going to be the basis of the factual data.

Geographic boundaries, I assume, in this bill do not have the problem involved in '65, where there was some question as to whether a particular precinct belonged in one district or another.

I have not studied the enactment, but I would assume that all of the geographic area is defined by the bill and that we can figure out what those geographic areas are and check them against the census tracts that are in evidence and that the population that is included in those geographical areas will be the allocation of population that this Court must consider in ruling the motion to lift the injunction.

Now, do I anticipate or state anything contrary to what will eventually work out in figuring out how much population is in each of these districts?

MR. DOWNEY: Judge, we discussed this matter at great length yesterday afternoon, the three of us, Mr. Collins, Mr. Preisler and myself, and because of the discrepancies which have appeared in the map which we attached to our pleading,

I felt, and the other two agreed, that we should try to provide the Court with absolute accurate population figures that would be subject to no question, and in computing the population figures we do have some problems, some mechanical problems, in the districts that take in parts of Kansas City and parts of the City of St. Louis and parts of the county of St. Louis.

The problem is relating the 1960 census data to the precinct wards and townships which existed in 1967. In all three of these areas, new precinct lines, new ward lines and new township lines of the county of St. Louis have been drawn since 1960. I think in every instance the number of units has been increased, and so the boundaries are not the same.

It was suggested that we could get an accurate census count of the new districts in the city areas from the Bureau of the Census, and we agreed that the Attorney General's office could contact a member of Congress to handle this request for us.

In the 1960 census there are maps which are actually a part of the census, that were used by the Census Bureau. I refer to what is in evidence in this case as Plaintiff's Exhibit No. 7, being the census tracts for St. Louis, Missouri, and East St. Louis, Illinois.

As an example, a map of the City of St. Louis showing the wards and broken down in greater detail than wards is an actual part of the census.

So by utilizing the old maps and by furnishing the Census Bureau with new official maps from the appropriate election officials in St. Louis, St. Louis County and Jackson County, current accurate population figures based on the 1960 census can be computed by the Bureau of Census.

THE COURT: Mr. Downey, do you have any knowledge

as to whether or not the General Assembly recognized the problem that you have outlined and what the General Assembly took into account in drawing these districts?

MR. DOWNEY: No, I do not, Judge. But to complete what I was saying, in line with these conversations that we had yesterday afternoon, I called Congressman Hungate in Washington and discussed this problem with him last night, and he is very anxious to cooperate to see that this Court gets accurate population data for these new districts and that it gets it as soon as possible, and he has told me that if I will get his necessary information to him, including these maps, that he personally will take it to the Census Bureau and make the request and get it underway.

THE COURT: Let me add this additional comment on the record and to state my familiarity with the problems as I understand them in the utilization of census tracts which have projected and made figures more recent than the 1960 census.

This problem arose in the Jackson County Reapportionment case which pended before me, and I think it also arose in connection with the reapportionment of Clay County which pended before Judge Collinson. Because my knowledge of the Clay County case is simply judicial shop talk and therefore based on hearsay, let me say what I know of my personal knowledge in connection with the Jackson County case.

In the Jackson County case, the same problem arose, and at a conference not dissimilar from this, although the posture of that case was in an entirely different position, counsel agreed to stipulate the accurate figures from which the two county judge districts would be drawn and they were able from the publications of the Census Bureau that were available in Kansas City after consultation with people that

worked in the Bureau to project geographic lines and to actually agree upon the utilization of figures more current than the 1960 census, even though the projections had not been made on all of the census tract map, a copy of which I notice that you had in some of the data there.

The figures were agreed, using in every instance the most current census figures, recognizing that there would be some shifts of population that would not be reflected, yet these were the most accurate figures that could be obtained, and as I think was noted in one of the footnotes in the opinion, the division in the two districts was voluntarily worked out without the necessity of any court decree by those charged with the duty under the State law to have two districts of as equal population of compact districts to divide the county into an eastern district and a western district where tradition has had the boundary line of Jackson County, although, interestingly, the statute doesn't include any specific north or south or east or west line, simply to be divided into two equal parts.

Now, on the basis, gentlemen, of the experience—and I have worked with counsel from census data in that Jackson County case, we may be able to get much further with the information that we presently have.

I would suggest that we examine the various census books that you gentlemen, I think, probably looked at yesterday afternoon and lay out a schedule of what needs to be done so that we can get the facts stipulated on which the case will be submitted.

I want to commend counsel for spending the time together yesterday, because I think this problem can be attacked better today and you can bring me up to date on the conclusions that you may have arrived at, and you may have

all the answers and have some firm idea as to what the next best steps are.

Any objection from counsel on either side to going off the record and take a look at what we have here? Is that agreeable to everyone?

MR. COLLINS: Yes.

MR. DOWNEY: Yes.

MR. PREISLER: Yes.

THE COURT: Very well, let's close this portion of the record and I will come back on the record to state what hopefully will be a solution to our problem.

(Off-the-record discussion from 9:55 A.M. to 11:50 A.M.)

THE COURT: Let the record show after extensive and cooperative work with counsel, the following agreements may now be stated of record and the following direction for further proceedings established.

It is agreed by all parties that this case must be determined on the basis of the 1960 census figures and the constitutional validity of the 1967 Reapportionment Act so determined. None of the parties intend to contest this issue and no evidence will be introduced to the contrary.

It was agreed that Appendix B, published on Page 984 of 257 F.Supp. from the official manual of the 1961-1962 Missouri Blue Book, accurately reflected the population figures apparent on that exhibit.

It is apparent, however, that the only districts that can now be ascertained so far as accurate population is concerned, are the sixth, seventh and tenth districts, those districts being the only districts in the 1967 redistricting that do not require calculation of other than rural counties.

In regard to those districts, Mr. Preisler presented calculations that he had made from the census data already in evidence, which is assumed to be consistent with the map identified as Exhibit B in the 1965 case, and discrepancies between the census figures and Exhibit B attached to the Attorney General's pending motion were revealed to be as follows:

It should be stated of record that Mr. Preisler's figures are subject to check for mathematical accuracy and the statement of these figures is for the purpose of informing my brother judges of the background requiring a direction of further proceedings to be hereinafter stated.

Exhibit B shows a population for the sixth district of 425,238. Mr. Preisler's census figures indicate that only 422,238 population is included in the 1967 Act.

The figures set forth for the seventh district on Exhibit B, namely 436,769, checks with Mr. Preisler's calculations from the census figures.

District No. 10 has two more population included in its figure of 423,866, whereas, Mr. Preisler's census calculation is two population off.

Mr. Preisler also presented calculations made from census tracts which had been superimposed on new political boundaries for the third district. Exhibit B attached to the Attorney General's motion indicates a population of 431,507 for that district in the City of St. Louis and a sliver of St. Louis County, whereas Mr. Preisler's census calculations indicate a population of 436,099 as being in that particular district.

The problem of obtaining accurate factual data was fully discussed and Mr. Downey advised the Court that Representative Hungate had volunteered to use his good offices with

the Bureau of Census to the end of obtaining accurate population figures that may be the subject of stipulation by all the parties.

It was agreed that Mr. Downey and Mr. Preisler would meet and obtain by appropriate communication a set of maps from various political subdivisions, Boards of Election Commissioners or from any other appropriate source upon which would be drawn accurate lines to reflect the districts established by the General Assembly in its description of geographical areas in the 1967 legislation.

The schedule for the deadline for obtaining and marking the maps will be stated later so that the time schedule will appear in one place in this record.

It is anticipated that the maps will be presented either to Mr. Hungate or to some person designated by him together with a joint request of all parties appropriately made in conjunction with any existing protocol, known or unknown, to the Bureau of the Census to seek its immediate aid in allocating the 4,319,813 population of the State of Missouri into the ten congressional districts established by the Missouri General Assembly in its 1967 Reapportionment Act.

It is further agreed that after this data is obtained from the Census Bureau, the parties will meet and prepare a stipulation of fact which will appropriately present an agreement on the population figures in a manner substantially the same as the parties were able to agree in connection with the 1965 litigation.

Additional documentary evidence will be included in that stipulation and such documentary evidence will include the full legislative history of the bill ultimately enacted into law, including any amendments made in committee or otherwise, together with any constitutional protests or any other documentary evidence that might relate thereto.

Included in the stipulation will be like data reflecting the legislative history of any and all other bills introduced in the 74th General Assembly of Missouri that proposed redistricting for the State of Missouri.

In the event either party proposes additional documentary evidence for inclusion in the stipulation and objection is entered to such evidence, the proffering party shall promptly call the Court's attention to the problem thereby presented and this Court, after appropriate consultation with my brothers, will give further directions in connection with whatever the problem may be.

The time schedule regulating further proceedings will be as follows:

The maps will be collected and marked not later than September 29, 1967, in order that appropriate transmission may be made by airmail or otherwise to Washington on Monday, October 2, 1967.

The stipulation concerning population and other documentary evidence above referred to shall be prepared and executed on or before October 9, 1967. This date is intentionally set on a Monday in order to permit counsel to work over the weekend on preparation of the stipulation.

The Attorney General has agreed to file written notice on October 9 as to whether he wishes to adduce any evidence in addition to that which has been subject to the above-mentioned stipulation.

If the Attorney General indicates that he does desire to introduce other than documentary evidence, he shall prepare, serve and file a list of the witnesses to be called, together with a short summary of the testimony he intends to adduce by such witness. It is anticipated in this connection that the parties may be able to agree to some facts that

might be supplied only by oral testimony and the Court is confident that appropriate request and the consistent courtesy and cooperation that has been the rule in this case will be extended between counsel in that connection.

In the event the Attorney General indicates that the case will be submitted on the stipulation, then this case will be processed in substantially the same procedural manner as was followed in connection with the 1965 case in which all of the evidence was subject to stipulation.

All parties have indicated that in the event all factual data may be stipulated, that none of the parties, including the intervenors, desire oral argument. In the event no oral argument is held, the following schedule of briefs is established pursuant to the agreement of counsel:

The Attorney General's and Intervenors' brief to be filed on or before October 27, 1967.

Plaintiffs' answer brief to be filed on or before November 13, 1967.

Attorney General's and Intervenors' reply briefs, if desired, shall be filed on or before November 24, 1967.

In the event this alternative is followed, it is agreed that the case shall be considered submitted and under advisement upon receipt of the final brief.

In the event the Attorney General indicates a desire for further evidentiary hearing, and prepares, serves and files his list of witnesses, all parties will simultaneously file trial briefs on or before October 19, 1967. That date is designated in order to give the three-judge court an opportunity to study the trial briefs of counsel prior to the evidentiary hearing which will be set and is now set for October 23, 1967.

In the event an evidentiary hearing is held on October 23,

1967, the Court is confident that the parties will be granted leave to file supplemental briefs in which they will be given appropriate opportunity to discuss the evidence adduced at the evidentiary hearing. It is, of course, impossible at this time to set that schedule because of the inability to anticipate exactly what evidence might be adduced.

In further regard to the possible evidentiary hearing and the requirements that the Attorney General prepare, serve and file his list of witnesses on or before October 9, 1967, it is appropriate that counsel for the plaintiffs prepare, serve and file a similar list of witnesses they might call on or before October 16, 1967.

The provision for listing the witnesses and indicating a short summary of the testimony to be adduced by those witnesses is designed to aid counsel in preparation for the hearing should one be held and to enable counsel to prepare for such cross-examination that they may wish to conduct at the possible evidentiary hearing.

Counsel are requested to file the original of all of the required filings with the Clerk of the Court at Kansas City, Missouri. The Court will take the file in this case and keep it deposited with the Clerk of the Court so that Mr. Truman will be able to handle all the filings.

In order that the members of the three-judge court have a full set of the briefs as they are filed, counsel are requested to forward a copy of their filings to Judge Mathes at his chambers in the United States Court House in St. Louis, Missouri, and copies to Judge Collinson's chambers and my chambers in the Western District of Missouri, United States Court House at Kansas City.

Gentlemen, I have attempted to follow the notes as I made them, and are there any additional suggestions that anyone

has made or did I misspeak myself in stating what I understand are agreements? Any additions, Mr. Preisler?

MR. PREISLER: Off the record.

(Short discussion off the record.)

THE COURT: Any additional suggestions from anyone?

MR. COLLINS: No.

MR. DOWNEY: I think the Court has accurately stated the thing, Judge. I have nothing to add.

THE COURT: I take it then from your suggestion of no additions, that the procedure and the directions contained are satisfactory to the plaintiffs, Mr. Preisler?

MR. PREISLER: That is right.

THE COURT: And to the Attorney General?

MR. DOWNEY: Yes, Judge.

THE COURT: And to the Intervenors?

MR. COLLINS: Yes, sir.

THE COURT: Very well. Now, I would like to also put of record the helpful suggestions made off the record that if the various steps can be moved faster by the continued cooperation of counsel, that you simply move up the deadlines on the next step, which will give you additional time for the preparation of your next filing, whether it be a brief or otherwise, and I am certain that counsel will continue the excellent cooperation that has been evidenced here today, and I want the record to show not only my appreciation but the appreciation both of Judge Mathes and Judge Collinson.

Anything further that need be done as far as this case at the present time?

MR. PREISLER: No.

MR. DOWNEY: No, Judge.

THE COURT: Mr. Collins?

MR. COLLINS: No, sir.

THE COURT: Thank you very much, gentlemen. I think we have designed some procedures that get at the fact.

Let me make an additional short statement for the record. I would like to add for the record a statement that I advised counsel that I would make on the record and to direct their particular attention to particular portions of the three-judge decision which is the law of this case. I am referring to 257 F.Supp. 953, and particularly to Page 969 in which the Court commented that, "The intervenors and the defendants were equally disinterested in what factors other than population were taken into account by the 1965 Missouri General Assembly. Counsel did not attempt to suggest any reason why it was not practicable to avoid variances," and then there is an analysis of an example of the variation between the first and the tenth district.

On Page 975 of that opinion the Court quoted from the three-judge court in the North Carolina Congressional Redistricting which was affirmed by the Supreme Court in April of 1966, in which that Court held that, "Most significantly, that court held that no valid explanation is offered to justify these glaring discrepancies, if indeed they could be justified; the plaintiff having proven his charge of discrimination on the basis of population by evidence to which the parties have stipulated, the burden was placed upon the defendants to justify the variations from this standard which were shown to exist. The defendants have failed to meet this burden and we are forced to the conclusion that the plaintiff and those in his class are entitled to relief."

The Maryland Redistricting cases were cited, and this Court in italics quoted from the first Maryland case on Page 976 of 257 F.Supp., and we placed in italics the language that, "When the mathematical imbalance between districts is of sufficient magnitude the burden shifts to the defendants to justify the disparity."

Quoting from Chief Judge Sobeloff's opinion in 253 F.Supp. 731, a still later Maryland Congressional case, also affirmed by the Supreme Court of the United States, and again using italics we quoted the language of Chief Judge Sobeloff, that, "There is no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground."

I directed attention of counsel off the record and now do so on the record to the language in **Swann v. Adams**, 385 U.S. 440, decided by the Supreme Court of the United States on the same day that the opinion in this Court was affirmed, in which the identical language that this Court italicized in its 1965 Congressional case was quoted and relied upon by the Supreme Court of the United States as the applicable rule in that legislative reapportionment case. I know counsel are familiar with the principle that greater latitude of variance is permissible in a State legislative case arising under the Fourteenth Amendment than that commanded by a specific article relating to the congress and required under congressional statute in the congressional cases.

I called counsel's attention, and for the record do so again, to the Supreme Court holding in **Swann v. Adams**, where on Page 443, the Supreme Court held that, "We reverse for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts with respect to both the senate and house of representatives."

Skipping a reference to **Reynolds v. Sims**, the Court continued, "De minimis deviations are unavoidable, but . . . none of our cases suggests that differences of magnitude will be approved without a satisfactory explanation grounded on acceptable state policy."

In reliance upon **Roman v. Sincock**, the Court quoted with approval that "The Constitution permits such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

On Page 445 the Supreme Court held that, "As this case comes to us we have no alternative but to reverse. The District Court made no attempt to explain or justify the many variations among the legislative districts. As for the State, all it suggested in either the lower court or here is that its plan comes as close as 'practical' to complete population equality and that the State was attempting to follow congressional district lines. There was, however, no attempt to justify any particular deviations, even the larger ones, with respect to either of these considerations. Moreover, the State's brief states only that the legislature followed 'in most instances' the congressional boundaries, and with respect to 'practicality' it seems quite obvious that the State could have come much closer to providing districts of equal population than it did."

The Court commended the State for its admirable candor in conceding that it had offered no evidence in the District Court to explain the challenged variations, but it then held that no showing having been made, and relying upon Chief Judge Sobeloff's opinion, which we italicized in our 1965 case, that there was no showing that the differences were either unavoidable or justified upon any legally acceptable ground.

Now, I want to make clear on the record, as I attempted

to make clear off the record, that I do not suggest in any way that I have anything other than an open mind on the question of whether or not the sole defense thus far presented to this Court by the Attornel General is based totally and completely upon the legal proposition that the variations are within the doctrine of de minimis.

Isn't that a fair statement, Mr. Downey?

MR. DOWNEY: That is the sole issue that we have raised in our motion.

THE COURT: I suggested off the record that this was not dissimilar from the candor of the State and equally commendable, and I commend counsel as did the Supreme Court, for sharply focusing the issue in the 1965 case where the concession was made as I think it was made initially in the 1963 Act, that if population alone was the rule of decision in **Westberry v. Sanders** and if **Westberry v. Sanders** was controlling, that there was no question that the 1965 reapportionment was constitutionally invalid.

Now, in somewhat similar fashion, it is obvious that there are variations, the exact extent of which we cannot now tell, because of the difficulty with the figures that are discussed in this pre-trial, but that there are variations, and the State's present position is that the 1967 plan is immune from constitutional attack, indeed it is consistent with the command of the Constitution, because the variations, whatever they may be, do fall within the saving of a proper application of de minimis.

Now, I again do not suggest and do not in any way attempt to insist that the Attorney General consider this as an invitation to either refrain from adducing evidence or to adduce evidence. I think the provisions made in the order will permit counsel to make that judgment and to indicate what its judgment is with full knowledge that neither this

one judge of a three-judge court or any of my brothers are attempting to tell counsel for either side how they should run their lawsuit. Our interest is to obtain the facts, to properly apply the law, as we would in any other case that it is our duty to decide.

Now, any additional suggestion that counsel for either side would like to make either in connection with what I have just stated or anything else?

Mr. Preisler, do you have anything to add?

MR. PREISLER: No, sir.

THE COURT: Mr. Downey?

MR. DOWNEY: Judge, I think it is clear from what you have said that although our motion is founded entirely on the theory that the present congressional districts fall within a de minimis doctrine, that the issue of the justification variations by factors incident to a rational State policy are inherent in this case, in the event that the Court should find that the districts do not fall within the doctrine of de minimis, and as I have told the Court, I do not anticipate at this time that production of evidence on the issue of rational State policy to explain the variations, but when October 9 comes around, when we have had an opportunity to give this matter further consideration, we may reach a position to adduce evidence.

THE COURT: Oh, yes, you correctly anticipate in what I am sure I would be joined in by my brother judges, if you would care to file even an amended motion, simply do so; on October 9 this is ample time to enable everyone to fully prepare for any evidentiary hearing that you would like, and I have never checked the question of whether or not the Rules of Civil Procedure are totally applicable to a three-judge court, but I am inclined to think they are, and I am

certain that all trial judges in the Western District of Missouri are completely liberal in permitting amendment of any pleading for good cause shown and speaking for myself there would certainly be good cause if you cared to amplify and to put a second string in your bow as far as your present position that a proper application of de minimis requires a determination that the 1967 Act is constitutional.

If you want to put an alternative string in your bow that even if you are not right about that, nevertheless there are legally justified reasons to explain the disparities as we finally determine what they may be. So you rest assured that if you want to amend your motion, leave will be granted.

Anything additional from intervenors?

MR. COLLINS: No, sir.

THE COURT: Very well. Again thank you very much, gentlemen. (12:40 PM)

(REPORTER'S CERTIFICATE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

EXHIBIT NO. 24

Clayton, Missouri
September 27, 1967

The undersigned, O. F. Moehle, Director of Elections, Board of Election Commissioners, St. Louis County, Missouri, hereby certifies as follows:

The boundaries of the following townships of St. Louis County have not been altered since the 1960 census:

Clayton
Concord
Creve Coeur
Gravois
Hadley
Jefferson
Lemay
Lincoln
Meramec
Midland
Normandy
Washington

The boundaries of the following townships have been altered since the 1960 census:

Airport
Bonhomme
Ferguson (New)
Florissant

St. Ferdinand
Spanish Lake (New)

Maps of townships that have been altered, namely, Airport, Bonhomme, Ferguson, Florissant, St. Ferdinand, and Spanish Lake, are submitted herewith.

The precincts in Bonhomme Township which are a part of the 2nd Congressional District as designated by the 1967 Act of the Missouri General Assembly are the following: 1, 2, 3, 6, 7, 8, 19, 41, 48, 59, 77, 89, 90, 91, 93. The boundaries of these precincts have not been altered since the enactment of the 1967 Act.

The remaining precincts of Bonhomme Township are part of the 8th District as designated by the 1967 Act.

Map of Bonhomme Township shows the township boundary in blue and the boundary between the 2nd and 8th Districts in red.

Descriptions of the precinct boundaries of the six altered townships are also submitted herewith.

/s/ O. F. Moehle

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

STIPULATION OF EVIDENCE.

Plaintiffs, Defendants and Intervenor-Defendants stipulate and agree that the Court may consider the following evidence in the case herein pending:

1. Senate Bill No. 107, 74th General Assembly of Missouri, with digest of legislative history;

2. House Bill No. 399, 74th General Assembly of Missouri, with digest of legislative history;

3. House Bill No. 449, 74th General Assembly of Missouri, with digest of legislative history;

4. House Bill No. 870, 74th General Assembly of Missouri, with digest of legislative history;

5. Senate Bill No. 182, 74th General Assembly of Missouri;

6. Senate Committee Substitute for Senate Bill No. 182, 74th General Assembly of Missouri;

7. [Perfected] Senate Committee Substitute for Senate Bill No. 182, 74th General Assembly of Missouri;

8. Senate Substitute for Senate Bill No. 182, 74th General Assembly of Missouri;

9. House Committee Substitute for Senate Committee Substitute for Senate Bill No. 182, 74th General Assembly of Missouri;

10. Truly Agreed To and Finally Passed House Substitute for Senate Committee Substitute for Senate Bill No. 182, 74th General Assembly of Missouri;

11. Extract of Senate and House Journals pertaining to Senate Bill No. 182, 74th General Assembly of Missouri;

12. Map of Missouri Legislative Districts, House of Representatives, State of Missouri, as filed with James C. Kirkpatrick, Secretary of State of Missouri, by State Reapportionment Committee, March 31, 1966;

13. Letter, Director, Bureau of the Census, October 6, 1967; and enclosure listing 1960 population of Missouri Congressional Districts as established by the 74th General Assembly of Missouri;

14. Map of Missouri, population of counties, 1960 census;*

15. Map of St. Louis by ward and precinct boundaries, 1966, Board of Education Commissioners for the City of St. Louis;

16. Map of St. Louis by ward and precinct boundaries, 1966, Board of Election Commissioners for the City of St. Louis, showing 1960 population for each ward;*

17. Maps of individual city wards, St. Louis, Missouri, Board of Election Commissioners, 1966;

18. Letter, Director, Bureau of the Census, January 18, 1967, listing 1960 population of wards in St. Louis City, Missouri;*

19. Map of City and County of St. Louis, Copyright—Wunneberg Engineering Company, Overland 14, Missouri;*

20. Map of townships, St. Louis County, Missouri, St. Louis County Planning Commission, 1965, showing 1960 population for each township;*

21. Map of St. Louis County Townships, 1966, Board of Election Commissioners, St. Louis County;

22. Maps of individual townships, St. Louis County, St. Louis County Board of Election Commissioners, 1966;

23. Letter to State Senator Robert A. Young from Joe D. Kolb, Chief, Geographical Operations Branch, Bureau of the Census, Jeffersonville, Indiana, February 14, 1967, listing 1960 population for townships in St. Louis County, Missouri;

24. Certificate of Mr. O. F. Moehle, Director of Elections, Board of Election Commissioners, St. Louis County, Missouri, September 27, 1967;

25. Map of Kansas City by wards and precincts; Board of Election Commissioners, Kansas City, Missouri, 1965;

26. Maps of individual city wards, Kansas City, Missouri, Board of Election Commissioners, 1965;

27. Jackson County Street Map, Copyright—Gallup Map and Stationery Company, showing 1960 township populations;*

28. Kansas City, Missouri, Annexation Map, Director of Planning, Kansas City, Missouri, 1966;

29. Exhibits filed in Preisler et al. v. Secretary of State et al., No. 923; and Childs et al. v. Secretary of State, No. 924, United States District Court, Western District of Missouri, Central Division;**

30. Eection and population data in the Blue Books or Official Manuals of the State of Missouri from 1960 to-date and the official publications of the United States Department of Commerce, Bureau of the Census from 1960 to-date.

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*Obtained from files of State Representative Fred E. Copeland, Chairman, House Committee on Congressional Redistricting, 74th General Assembly of Missouri.

**Plaintiffs' Exhibits in Cases 923 and 924:

#1. United States Bureau of the Census, United States Census of Pop-

ulation 1960, Number of Inhabitants, Missouri Final Report PC(1)-27A, U. S. Government Printing Office, Washington, D. C., 1961.

#2. United States Bureau of the Census, United States Census of Population, 1960, General Population Characteristics, Missouri. Final Report PC(1)-27B, U. S. Government Printing Office, Washington, D. C., 1961.

#3. 1960 Census of Population, Supplementary Reports June 16, 1961, PC(S1)-6, "Population of Cities of 10,000 or more by wards, 1960."

#4. (From the Official Manual State of Missouri 1961-1962, p. 1470.)

#5. (From the Official Manual, State of Missouri 1961-1962, p. 238.)

#6. Map of St. Louis Congressional Districts by ward and precinct boundaries, July 1961. Board of Election Commissioners for the City of St. Louis.

#7. United States of the Census, United States Censuses of Population and Housing, 1960. Census Tracts, Final Report PHC(1)-131. U. S. Government Printing Office, Washington, D. C., 1962.

#8. United States Bureau of the Census, United States Censuses of Population and Housing, 1960. Census Tracts. Final Report PHC(1)-70, U. S. Government Printing Office, Washington, D. C., 1962.

#9. United States Bureau of the Census, United States Census of Housing, 1960, Vol. III, City Blocks. Series HC(3), No. 232. U. S. Government Printing Office, Washington, D. C., 1961.

#10. United States Bureau of the Census, United States Census of Housing, 1960, Vol. III, City Blocks, Series HC(3), No. 230. U. S. Government Printing Office, Washington, D. C., 1961.

NORMAN H. ANDERSON
Attorney General

/s/ THOMAS J. DOWNEY
First Ass't. Attorney General

/s/ LOUREN R. WOOD
Assistant Attorney General.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

TRANSCRIPT OF PROCEEDINGS.

BE IT REMEMBERED that heretofore on Monday, the 23rd day of October 1967, the above-entitled cause came on before the HONORABLE M. C. MATTHES, Judge of the United States Court of Appeals; the HONORABLE JOHN W. OLIVER and the HONORABLE WILLIAM R. COLLINSON, Judges, United States District Court for the Western District of Missouri, sitting at Jefferson City, Missouri, and the following proceedings were had and entered of record:

The plaintiffs were represented by Mr. Paul W. Preisler, 4274 Shenandoah Avenue, St. Louis, Missouri.

The defendants were represented by Mr. Thomas J. Downey and Mr. Lorian Wood, Assistant Attorneys General, State of Missouri.

The intervenors were represented by Mr. David Collins, 107½ North Rollins, Macon, Missouri.

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INDEX.

	Page
WITNESS	
RICHARD J. RABBITT	
Direct Examination by Mr. Downey	56
Direct Examination by Mr. Collins	74
Cross Examination by Mr. Preisler	77
WILLIAM BAXTER WATERS	
Direct Examination by Mr. Downey	79
Cross Examination by Mr. Preisler	86

THOMAS G. WOOLSEY
Direct Examination by Mr. Downey 89
R. J. KING, JR.
Direct Examination by Mr. Downey 94
Cross Examination by Mr. Preisler 97

EXHIBITS		Marked	Received
HD-A	Memo re population figures	19	27
HD-B	Population map	20	27
HD-C	Deposition of Omer Avery		37
HP-A	Letter Dept. Commerce	71	74
HP-B	Letter Dept. Commerce	72	74
HP-C	Letter Dept. Commerce	72	74
HP-D	Map correcting Camden County	73	74
HP-E	Map of Congressional Districts	73	74

JUDGE MATTHES: Gentlemen, this morning we have scheduled the case of Paul W. Preisler and others against the Secretary of the State of Missouri and the Attorney General of Missouri, F. V. Heinkel, Jr. and others, intervenors.

May we have the appearances, please? Mr. Preisler, I take it you are representing yourself and other plaintiffs?

MR. PREISLER: That is right.

JUDGE MATTHES: And whom do we have for the State?

MR. DOWNEY: May it please the Court, Norman H. Anderson, appearing by Thomas J. Downey, Assistant Attorney General, and Lorian R. Wood, Assistant Attorney General.

JUDGE MATTHES: And, Mr. Collins, I assume you are representing the intervenors?

MR. COLLINS: Yes, sir.

JUDGE MATTHES: It is the Court's understanding that

the parties desire to introduce some evidence. Is that the correct understanding?

MR. DOWNEY: Yes, Your Honor.

JUDGE MATTHES: Very well, you may proceed. I take it from a letter received from Mr. Preisler that there is going to be some objections to the evidence being offered, and at the appropriate time, Mr. Preisler, you may make whatever objection you think should be made.

I might say, of course, this matter is before the Court, and while the Court is of the opinion that you are primarily concerned with the legal question, we certainly don't want to cut off the right of the parties to offer evidence if they have any which may be pertinent to the issue before the Court.

I think we are going to permit the witnesses to testify, subject to objection, of course, and then when the Court considers the matter, we can rule out incompetent evidence or wholly irrelevant evidence.

So with that understanding, you may proceed, Mr. Downey. Call your first witness.

MR. DOWNEY: Thank you, Your Honor. We would like to call the Honorable Richard Rabbitt as our first witness.

RICHARD J. RABBITT,

called as a witness on behalf of the defendants, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. DOWNEY:

Q. Please state your name and address for the record. A. My name is Richard J. Rabbitt, R-a-b-b-i-t-t. My address is 4340 Forest Park Avenue, St. Louis, Missouri.

Q. What is your occupation, Mr. Rabbitt? A. My occupa-

tion, I am an attorney at law. I am a member of the Missouri General Assembly from the Eighth District.

Q. What is your academic background leading up to your professional competency? A. I attended St. Louis University. I have a Bachelor of Science degree in Political Science, Bachelor of Law degree from St. Louis University. I attended graduate school at St. Louis University for one semester, studying toward a Master's degree in Political Science, and I have practiced law for the past seven years and been a member of the General Assembly. This is my fourth term.

Q. When were you admitted to the bar in Missouri? A. I was admitted to the bar in 1960.

Q. How long have you lived in St. Louis? A. All my life.

Q. Prior to being elected to the General Assembly, have you held any other public offices? A. No, I have not.

Q. Do you hold any official position in the General Assembly other than a member from the district which you represent? A. Yes, I was elected at the Democratic caucus at the beginning of the Seventy-Fourth General Assembly to the position of majority floor leader. I still hold that position.

Q. Now, is this a party position or is this an office in the Assembly itself? A. It is a party position. It is a position of the Democratic party, and you are elected at a caucus of Democratic members.

Q. Mr. Rabbitt, would you explain to the Court what the duties of the majority leader of the House are? A. Well, the duties of the majority leader are not exactly set out in any of the rules, but through custom and useage, it is generally the duties of the majority floor leader to set the schedule of the General Assembly; usually makes the motions to adjourn and recess, and so on, so as to set up the working times for

the House of Representatives, and also to a large extent determines what calendar will be taken up by the membership. So that he controls to a certain extent the schedule of the House of Representatives in regard to what bills will be taken up, and also he has the primary responsibility for the administration's program, seeing that the administration program is passed, the bills that the Governor recommends. Also, I might add, he has responsibility for leading the Democrats on the floor of the House in opposition to the minority party; in other words, if the minority party has certain arguments, and so on, against administration policy, it is usually the majority leader's duty to speak against these arguments, and so forth, defend the administration.

Q. Is the Democratic party at the present time the majority party in the General Assembly? A. That is correct.

Q. What is the division in the parties in the House? A. There are 107 Democrats and 56 Republicans. I could be one off there.

Q. There is a total membership— A. We have 163 members, and then we have 107 to 56.

Q. Now, you spoke about certain duties you have in connection with the various calendars. Explain what the various calendars are, if you will, sir. A. Well, in the House we have —as far as the basic calendars that are used for work, we have the perfection calendar, the House bills for perfection. Do you want me to explain how they are used?

Q. If you could, briefly. A. The House perfection calendar, bills are placed on the House perfection calendar when they come out of the House Committee. In other words, a bill is introduced, it is referred to a committee; if it is voted out favorably by the Committee it goes to the House perfection calendar. At the perfection stage, a bill can be amended. It is debated; it is brought up, it is debated and it can be

amended, and when finally debates are finished, all the amendments are offered or defeated, than it is voted on whether it shall be perfected or not. If it is voted to be perfected, then the bill goes to the printer and is reprinted with all the amendments incorporated within it and distributed to the members, and then it goes to the third reading calendar, House bills for third reading.

Now, these are the formal calendars I am talking about. There is House Bills for Perfection formal calendar, and the reason—we have a formal calendar and an informal calendar in the House. The formal calendar, bills go on the formal calendar ordinarily in the order in which they are reported out of Committee. If a bill is reached and the member who is sponsoring the bill does not wish to take up the bill at that time, the bill is usually placed on the informal calendar for perfection.

The same way with third reading. We have a third reading calendar. After a bill is perfected, it is put on the third reading calendar, and it is put in in the order in which it comes back from the printer after the bill is perfected. It is reported out of Committee on bills perfected.

We have the informal calendar in which the bills are placed; usually if we get to the place where this bill should be brought up, if the sponsor does not want to bring it up, we can place it on the informal calendar, third reading, and it can be brought up at the time we go to that calendar.

These are basically two calendars in regard to House bills. We also have a House calendar of House bills with Senate amendments. This is if a bill passes the House, is sent to the Senate and it is amended, comes back to the House, the House has to either accept the amendment or refuse to accept it. These bills are placed on a separate calendar.

Then we have the formal and informal calendar of Senate

bills for third reading. We do not have to perfect Senate bills when they come over to the House. They can be amended and passed at the same time. So if a Senate bill is passed by the Senate, sent over to the House and reported out favorably by House Committee, it is usually put on the formal calendar of Senate bills for third reading, and again if the sponsor does not want to take it up when it is reached, it can go over to the informal calendar.

Then we also have special orders of business, and usually appropriation bills and bills which are of great importance, we feel are of more importance than the ordinary bills, by vote of the membership we can set that up as a special order of business, and it is on a separate calendar, and it is taken up whenever the membership has voted to take it up. In other words, that is what we did on this particular bill, we set it up as a special order of business, the redistricting bill.

Q. Do I understand, Mr. Rabbitt, the present General Assembly in the State of Missouri is the Seventy-fourth General Assembly? A. That is correct.

Q. And do I further understand that the Seventy-fourth General Assembly met in regular session in January of 1967 and adjourned June 30th of 1967? A. That is correct.

Q. How many House bills were introduced in that regular session of the General Assembly? A. I don't have the exact number, but there were over 800, I know that, close to 900 bills.

Q. Approximately how many House bills were actually passed by the House and sent to the Senate for action?

JUDGE OLIVER: Mr. Downey, would you enlighten me as to how this general information is relevant and pertinent?

MR. DOWNEY: Your Honor, I am making a record here in the event this case should go on to the Supreme Court of

the United States, in order that that Court might be able to view the action of the General Assembly on this particular bill in the context of the other business that was before the General Assembly at its regular session of the Seventy-fourth session, and the impression could very easily be made that the General Assembly had six months to act on this question of redistricting, and the truth of the matter is, the General Assembly, insofar as the House is concerned, acted on 800 bills within that House itself, and that it did not have six months to devote its attention to this issue or this issue primarily, that there were many major issues before the General Assembly.

I don't intend to dwell upon this at any great length; in fact, my line of questioning in that regard is practically completed now.

JUDGE OLIVER: Well, is it your general theory that the General Assembly did not have sufficient time to properly consider this matter?

MR. DOWNEY: No, Your Honor, it is not.

JUDGE MATTHES: If you have the information, Mr. Downey, as to the number of bills passed by the House and Senate, why don't you just make a statement? I don't suppose anyone would controvert that.

MR. DOWNEY: Well, I don't have, Your Honor, and I thought this witness could tell us very readily.

JUDGE MATTHES: Very well.

A. I don't have the exact figures of how many bills were passed. I could give you an idea. I believe that the House must have passed 600 bills, around 300, that I would think they went over to the Senate. Now, as far as finally enacted bills, I think the Senate enacted somewhere around 150. I don't have that exact figure. I know there were less than 300

bills enacted completely, and the number of Senate bills and House bills are about even at this time, so I would think they passed around 300, and about half of those were finally passed by the Senate.

Q. Now, in your testimony you said that you had some major responsibility in guiding administration measure through the House. Is that right, sir? A. That is right.

Q. Did congressional redistricting become a question of major importance to the administration in the Seventy-fourth General Assembly? A. Well, I would say that it was a question of importance in that it was necessary to pass a bill rather than to have the congressmen run at large. I think the administration was interested in seeing that a bill was passed, but the administration, in the form of the Governor, made no recommendations personally to me about any particular bill being passed or any particular type of districts. In other words, they were just interested in seeing that a bill was passed, but the administration did not take an active part in trying to pass any special bill.

Q. The administration did want to avoid at-large election of congressmen in Missouri? A. That is right.

Q. Now, Mr. Rabbitt, there has been stipulated in evidence in this case that Senate Bill 182 was introduced in the Senate and that a Senate Committee Substitute for that bill was reported out on the floor of the Senate, and that this Senate Committee Substitute with perfecting amendments was passed by the Senate and came over to the House. It has also been stipulated into evidence that this bill was referred to the House Committee which was considering congressional redis[illegible]cting. It has also been stipulated that the House Committee reported out a House Committee Substitute for Senate Bill No. 182. A. That is correct.

Q. Now, prior to the reporting out of House Committee

Substitute for Senate Bill 182 by the Committee, did you have any duties in regard to this congressional redistricting legislation? A. I did not. I was not a member of the redistricting committee in the House.

Q. Well, after this bill came out of Committee onto the floor of the House, what duty, if any, did you have in regard to the handling of the House Committee Substitute for Senate Bill 182? A. I had no duties in regard to the handling of this bill. The only thing that I did was confer with the Committee chairman, Representative Copeland, who was going to handle the bill on the floor, as to a time to set it for special order of business so we could have adequate time to debate the bill. So we did make it a special order of business, and I think it was for June 14, but other than that, I had no duties. So it was the duty of the chaiman of the committee to handle the committee substitute on the floor and see that it was adopted.

Q. Describe, if you will, the legislative action in the House on this House Committee Substitute.

JUDGE MATTHES: Mr. Downey, isn't that covered by the stipulation?

MR. DOWNEY: Yes, Your Honor, it is.

Q. (By Mr. Downey) Well, the stipulation discloses, Mr. Rabbitt, that the House Committee Substitute, when it was taken up by the House and voted upon, was defeated, and I don't have the exact vote on that before me. It was defeated by a vote of 108 against, 53 for, and two either absent or not voting. Do you recall that vote, sir? A. Yes, I do. That is correct.

Q. Now, subsequent to the defeat of the House Committee Substitute, did that then place the bill that had come over from the Senate on the legislative calendar as the legislative

proposal on this subject before the House? A. That is correct, the Committee Substitute was defeated. The original bill came before the House, which was the bill that had been sent over from the Senate. Actually it had been amended in the Senate, but the bill as we received it from the Senate was before the House at that time.

Q. At that time did you undertake any particular duty in regard to the Senate Committee Substitute that was before the House? A. No, it is my understanding that Senator Avery, who had been the sponsor of the bill in the Senate, had requested Representative Rolwing in Mississippi County to handle this bill on the floor if the House Committee Substitute was defeated, so Representative Rolwing proceeded to handle this bill and attempt to get the original bill passed.

Q. The record discloses that numerous amendments were offered to the Senate Committee Substitute which were defeated, and that this was on June 14, 1967. Now, in the course of the legislative action upon these various amendments, did you come to any decision as to what should be done procedurally in regard to the calendar concerning this particular piece of legislation? A. Yes, it came to my attention that because of the many amendments that were offered and through talking to various members, that it was thought that there should be some changes in this Senate bill to improve it; it seemed to me also that the general tenor of the House was not to adopt these amendments piecemeal because it might throw the population figures out, so I took the position after a caucus and talking to various members that we should recess until the following week and try to come up with perhaps a substitute bill which would embody some of these amendments but which also would keep the population figures in line.

Q. Was this in fact done? A. Yes, I made a motion that

we postpone further consideration of the bill until the following Monday, which I think was the 19th.

Q. Then what happened in this three or four—

JUDGE MATTHES: Mr. Downey, the Court has no desire to cut you off at all, but I am wondering if all of this isn't covered in your stipulation. We have copies of all the bills, and the legislative history seems to be set out rather fully in the stipulation. If the witness can enlighten the Court on any pertinent matters, of course we will be glad to hear him or any other witness, but in the final analysis, I suppose we are bound pretty much by the stipulation, or any court would be bound by the legislative history that is here.

MR. DOWNEY: Thank you, Your Honor.

Q. (By Mr. Downey) Now, the record discloses, Mr. Rabbitt, that on June 19th a House Substitute for the Senate Committee Substitute was offered by you. A. That is correct.

Q. Were you the author of the Substitute? A. I was actually not the author of the Substitute. As I mentioned before, we had recessed to give various members of the House an opportunity to try to get together with the other members and tie all their amendments into a bill, a substitute bill. We thought that the tactic was that a substitute bill would not —we could satisfy the membership, if they could agree on a substitute bill, then there would be no amendments to it, it would either be adopted or defeated, and if it were adopted we thought there would be a good chance that the Senate would take it also and we could get a bill passed. This is what we were aiming for, was to try to get a bill passed before the end of the session.

Q. Then you sponsored the bill as a service, in your position as majority leader, is that right? A. Yes, I was requested to handle the bill. They thought that the position

as majority leader might add a little more force or prestige to getting the bill passed.

Q. You have before you a map from your files that you used in sponsoring this substitute bill. A. Yes, I do.

(HEARING DEFENDANT'S EXHIBIT A WAS MARKED FOR IDENTIFICATION)

Q. Mr. Rabbitt, do you also have before you a written memorandum in regard to certain population figures that you used in the sponsorship of the bill? A. Yes, I do.

JUDGE OLIVER: Are we talking now about House Committee Substitute for Senate Committee Substitute for Senate Bill 182?

MR. DOWNEY: Your Honor, we are talking about House Substitute for Senate Committee Substitute for Senate Bill 182.

JUDGE MATTHES: That is the one that was finally passed?

MR. DOWNEY: Yes, Your Honor.

JUDGE MATTHES: It is Exhibit No. 10.

(HEARING DEFENDANT'S EXHIBIT B WAS MARKED FOR IDENTIFICATION)

Q. (By Mr. Downey) I hand you what has been marked for identification Exhibit HD, Defendant's A and B, and are these the map and the memorandum which you have referred to in your earlier testimony? A. That is correct.

Q. Now, I note from figures on both of these exhibits, there are figures in red and then there are figures in pencil and in pen where some figures appear to have been changed. Explain what these various figures are, if you will, sir. A. Well, the figures in red were—I believe they were writ-

ten in by Representative Earl Sponsler's secretary. This group of representatives I mentioned before had met, drawn up the substitute bill; I believe she typed up the bill in order to have it mimeographed and distributed. I wanted to have a map showing the districts and populations and so on, so that I could find out if this bill would have support, and this was the map that was handed to me by either Representative Sponsler or his secretary, showing the figures that they had come up with in totalling up the various districts. These were the red marks. Now, the ink marks are my own; this is my own handwriting; and after checking over the districts and the map, I found that they had omitted one change that we had made between the First and the Third District, which involved four precincts in the Fifth Ward, Precincts 1, 2, 19 and 20 of the Fifth Ward, and these were transferred from the First District to the Third. They had been in the First District in the Senate Bill. And so this made a difference of approximately 6,000. So the figures I changed were these figures of 442,000 to 436,000, and the other figures of four-hundred-twenty-five to four-hundred-thirty-one. I just added six-thousand-some-odd people to the Third District subtracted from the First District. There are some other figures here, but I don't recall exactly what those were for. They are in pencil. I think perhaps I was just jotting down numbers while we were debating the substitute.

JUDGE MATTHES: Mr. Downey, again I am wondering about the relevancy of this. The parties have stipulated that the 1960 census population controls.

MR. DOWNEY: Yes, Your Honor.

JUDGE MATTHES: And I have a little difficulty in seeing the relevancy of this.

MR. DOWNEY: I think from the testimony the witness has just given, Your Honor, he has shown that these changes

which the Committee made and changes that he made after the informal committee had submitted it to him, reflected in bringing the populations of two districts much closer together, and I was attempting to show that this was the legislative attempt, was to approach equality in population.

JUDGE OLIVER: Let me get clear, regardless of the question of relevancy, is this map in connection with House Committee Substitute for Senate Committee Substitute for Senate Bill No. 182, which is Exhibit 9 attached to the stipulation, or is this map somehow related to Exhibit 10, which is the House Substitute for Senate Committee Substitute for Senate Bill No. 182?

THE WITNESS: Your Honor, if I could answer that—

JUDGE OLIVER: Yes, I would like to know.

THE WITNESS: It is the latter. It is the House Substitute. This exhibit embodies the provisions of the House Substitute for Senate Committee Substitute for Senate Bill.

JUDGE OLIVER: Let me ask you this question then. Your House Committee Substitute for Senate Committee Substitute, which is Exhibit 9 in this record, for example, proposed a Tenth District, which included Dent County, and which would have had a variance of less than 2,000 population. The bill as ultimately passed in No. 10 moved Dent County out of the Tenth District and placed it in the Eighth. Can you tell me the circumstances and the reasons why in the process which you are describing that legislative decision was made?

THE WITNESS: Your Honor, I can't tell you exactly why that particular change was made. Let me just say that taking the two bills together, which I think we have to do—since I wasn't on the Committee, I don't know why they made the change in the Committee, but taking two bills

together, the Committee Substitute, for many reasons apparently, was rejected by the House and—

JUDGE OLIVER: What were the reasons?

THE WITNESS: Pardon me?

JUDGE OLIVER: Were the reasons a matter of record?

THE WITNESS: I don't know exactly. I think in order to find this out, you would almost have to question each individual representative; each one apparently who would not support this had some reason that they didn't like this particular division or apportionment of the representation, but I don't know exactly why, but cumulatively it was rejected two to one; whereas, the substitute was adopted by a majority of the representatives, but I am sure that—I don't know, perhaps each had his own individual reason.

I think generally our intention was to try to get the population as near equal as possible, but how you get this population as near equal as possible was the big problem, and this is what different individual representatives disagreed on.

JUDGE OLIVER: Well, this was the reason why it occurred to me, because your House Committee did have the Tenth District within an equality of 1927 votes of the ideal, and your Committee also had the always troublesome Sixth District within 3511 votes, but in the shuffle illustrated by your map, the Sixth District moved away from that closeness of equality of population to a minus 9,743, and the Tenth District to a minus 8,113. The question naturally occurs as to whether equality of population was actually being sought.

THE WITNESS: Well, Your Honor, I don't have those figures, but if I recall correctly, I think also that we have improved some of the districts. Wasn't there one district

there that was higher than the highest district that we had in the substitute?

The highest district that we thought we had in the substitute was 442,000. I believe in that House Committee Substitute there was a district that had a larger number than that. I don't have those figures with me, but isn't there one that has 445?

JUDGE OLIVER: Is it a fair statement, Mr. Rabbitt, that your information as to the motivation of the members of the Committee, of which you were not a member, must necessarily be based upon what the members of that Committee told you about why the changes were made?

THE WITNESS: My testimony would have to be from—yes, just hearsay testimony.

JUDGE MATTHES: Mr. Rabbitt, in order that the record is clear on this point, neither the House nor the Senate records the debates on bills and on amendments, isn't that true?

THE WITNESS: That is correct, Your Honor, none of the testimony in the Committee or on the floor of the House has been recorded, to the best of my knowledge.

Q. (By Mr. Downey) It is also true, Mr. Rabbitt, that the Committees make no written reports as such? A. That is correct. They just make recommendation, do pass or do not pass, or send it back without recommendation. This was reported out to pass, the House Committee Substitute.

MR. DOWNEY: Your Honor, I offer into evidence Exhibits HD A and B.

JUDGE MATTHES: Any objection?

MR. COLLINS: No, sir.

MR. PREISLER: Your Honor, with regard to the exhibits in question, the origin of those exhibits was somewhat

doubtful, namely, who put the marks on and who computed the figures, where the source of the figures was that they used. There was no statement made as to whether they used the official census or whether they used some information they got at various points.

JUDGE MATTHES: It will be received, subject to the objection. The objection, of course, will be considered when the Court considers the case.

(HEARING DEFENDANT'S EXHIBITS A AND B WERE RECEIVED IN EVIDENCE)

Q. (By Mr. Downey) Now, Mr. Rabbitt, in the performance of your duties as majority leader, you necessarily have to determine constantly the concensus of the membership of the House in regard to administration measures that are pending before the House? A. Yes, I attempt to try to find out, yes, the concensus of the House on these measures and other measures.

Q. And are you constantly in touch with the members of the House in order to determine this concensus? A. Yes, I am.

Q. And was this true in regard to the consideration of this redistricting legislation from the time the House Committee Substitute first came out on the floor until the time the House Substitute for the Senate Committee Substitute was finally passed by the House? A. That is correct.

Q. And in determining this concensus, did you become aware of the considerations that the various members of the House were recognizing in regard to this legislation? A. Yes.

Q. First of all, let me ask you this, sir. What factor did you consider in proposing the House Substitute? What were you basing that House Substitute on? A. Well, the first factor, I think, that motivated everyone in the—

MR. PREISLER: Objection, Your Honor. I don't think he can state the effect on other people.

JUDGE MATTHES: I think it is objectionable.

A. The first fact that I would take into consideration was equal population, because I realize that if we didn't pass a bill that was as near equal in population as possible that it would be declared unconstitutional, and I certainly didn't want to do all this work in vain, so I think this was the first consideration, was to try to get the districts in as near equal population as possible, but also to be able to pass a bill; in other words, I could have probably got these within two or three voters, maybe, if we used a computer or something like that, but this would never pass the Legislature. We are dealing with men, and these men represent people at home, and I think they have to follow these people's wishes, so we had to try to adopt a plan that could get 82 votes in the House and 18 votes in the Senate.

Q. Did you give recognition to any other considerations? A. Yes, I think the other considerations we gave recognition to were that we wanted the districts to be as compact as possible, not try and string them out across the State. We also took into consideration, I think, some things such as the historical geographical situation, such that a county in particular—another thing I should interject here, another very important thing, I think; we tried not to break up rural county lines. We tried to keep the county line or the county as the basic unit, within most of these districts, which were out in the rural areas. We did split up St. Louis County, St. Louis City and Jackson County. I think those are the only counties that we did split up, and these were in large urban areas. So we tried not to break up the county lines, and we tried to, if possible, stick to historical useage of these counties in districts; in other words, if a certain county had his-

torically been in a district with other counties over the years, we tried to leave it in that county if possible, if it didn't throw the population off.

MR. DOWNEY: No further questions, Your Honor.

JUDGE MATTHES: Mr. Collins, do you have any questions?

MR. COLLINS: No questions, Your Honor.

JUDGE MATTHES: Mr. Preisler.

MR. PREISLER: If the Court please, I have sort of a general objection to the testimony of the members of the General Assembly, which I think is best illustrated by the testimony we have received from Mr. Rabbitt.

In a sense, the testimony of these individuals is self-serving, not only to himself, to his political party, to his political faction, political area and also his political career.

This is not an ordinary bill. This is one in which we have a lot of controversy. The mere fact that there might be bipartisan agreement does not cure the possible bias and prejudice of some of the individuals. We do not know what their testimony is. We do not know what they did in their own minds to get them finally to vote upon this.

There is also the question of separation of power here, the conduct of the legislature, how they behave, what is in the minds of these various people as they make up a bill, is not something that this Court should really inquire into, and there are no records of the committee, which I think is brought out; there is no records of the floor debate.

There is no possible way to determine the reasons nor the motives of these legislators, whether they were population-motivated or whether they had other motivation, and we could bring in 163 plus the 34 members of the Senate and

still this Court could not get necessarily what was on their minds when they voted for that bill, and I feel the Court will ultimately have to judge, at least in my opinion, and I think in the opinions that you find in some of the other courts, on the actual result of what they produced, not upon how it got there, and therefore I feel that much of this testimony, an example of what we have gotten so far, will merely give an idea what went on in the Legislature and a degree of speculation.

JUDGE MATTHES: Shall we consider this as a motion to strike the testimony? Is that what you are doing?

MR. PREISLER: I would take that as a motion to strike —although I do not like to keep this from the knowledge of the Court—

JUDGE MATTHES: The motion will be denied. We will give it such consideration as we think it is entitled to.

MR. COLLINS: May it please the Court, Your Honor, I thought of a couple questions I would like to ask. May I ask them?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. COLLINS:

Q. Representative Rabbitt, is it true that Fort Leonard Wood is located in the Eighth Congressional District? A. That is correct.

Q. And is it also true that there are approximately 40,000 soldiers at Fort Leonard Wood? A. That is my understanding.

Q. Many of whom are non-residents of the State of Missouri, isn't this true? A. That is right.

Q. And consequently ineligible to vote upon congressmen in Missouri? A. That is correct.

MR. COLLINS: That is all.

JUDGE OLIVER: Mr. Rabbitt, I have examined the Hearing Defendant's Exhibit No. A, and find that the figures on this map and the figures as corrected on your Hearing Exhibit B are the identical figures that were initially presented to this Court as an exhibit to the motion to set aside the pending injunction at a preliminary conference on September 26 in this case. The origin of those figures and the reason for the mistake was set out in some detail. I find, however, that the figures are identical and according to your testimony were the basis upon which at least the House made its estimates of what population in fact existed in the various districts that you were working with. Did you at that time know that the figures with which you were working did not correctly and accurately reflect the 1960 census figures?

THE WITNESS: No, I did not. I thought those were the correct figures, with the exception of maybe being off, you know, just a few votes, maybe a hundred votes or something like that. But they were the best figures that we had available to us at that time, and we were short of time.

JUDGE OLIVER: You did have available the 1960 census, did you not?

THE WITNESS: Yes, we did, Your Honor, but the problem, if I may state it, was in breaking up some of these township precincts in Jackson County and in St. Louis County. I think that is where the errors were made, and I believe the information that we obtained was from the Election Boards, and I don't recall exactly why, but at that time we were unable to get the exact figures from the Census Bureau, as to how many people lived in a certain precinct.

They don't use, you know, the precincts apparently as their basis of computing the population. They have a different type of district. So at that time—this was on the 19th of June —we had to adjourn by the 30th. Those were the best figures available to us.

JUDGE OLIVER: Well, Mr. Rabbitt, you didn't split a single precinct in the Sixth District, did you?

THE WITNESS: I don't think so, no.

JUDGE OLIVER: Your figures are 3,000 off, and it was represented to this Court and the Legislature obviously operated under the impression that you were placing 425,238 in this district, when in truth and fact you were only actually placing 422,238, and there is stipulated in this Court that there are numerous other errors in the figures that the Legislature was actually using.

THE WITNESS: Your Honor, I think as far as the Sixth District, the only thing I can think of there is there was just a mistake in addition. We did have the correct figures from the Census Bureau on that. It must have been a mistake in the addition there, because we don't split any counties there.

JUDGE MATTHES: Anything further from this witness?

MR. DOWNEY: I have one further question, Your Honor.

DIRECT EXAMINATION—continued

BY MR. DOWNEY:

Q. Mr. Rabbitt, based upon your experience as a member of the Legislature and based upon your experience as majority leader of the House, do you have an opinion as to whether this redistricting bill as enacted is a reasonable legislative compromise? A. Yes, I do have an opinion. I think that it is a reasonable legislative compromise.

MR. DOWNEY: Thank you, sir.

CROSS EXAMINATION

BY MR. PREISLER:

Q. Mr. Rabbitt, you said the districts were as nearly equal as possible, namely, that is what you felt you were aiming for, right? A. Yes.

Q. Did you examine the final map? A. Pardon me?

Q. Did you examine the final map of the districts? A. What do you mean by the final map?

Q. Well, the map finally, just before the passage of the bill when it was presented to the House? A. This map that we introduced into evidence, is that right? Is that what you are talking about?

Q. No, the map of the districts as were finally presented to the House. A. That is it. That map there is the one that I had.

Q. Are you then aware of the shift of a county here would greatly improve this as to the extent of perhaps lowering the difference between the maximum and minimum by as much as 15,000? A. I will say this, that there probably were changes that could be made that would do what you are saying, but I don't think a bill like that could have passed. This bill got 82 votes. If we made changes in it, we may not have gotten 82 votes. We may not have passed the bill. So it was more important that we pass a bill, the best possible bill, rather than to have an at-large election.

Q. But it is true that there was no attempt made by you to introduce changes that would have brought it closer? A. No, there was no attempt by me. I thought this was the best that we could pass.

MR. PREISLER: Thank you.

JUDGE MATTHES: You may step down, Mr. Rabbitt. Who is your next witness?

MR. DOWNEY: Your Honor, I overlooked when we commenced this morning, the deposition of Senator Omer Avery. Senator Avery was in Europe when this motion was filed and just returned to this country about ten days ago, and he had a matter set this morning that involved witnesses who were coming into the State of Missouri from the State of California, and he felt like it was very important for him to go ahead and proceed with those commitments.

So we took the deposition of Senator Avery last Friday, and because of these circumstances, he is not here as a witness this morning, and I would like to introduce into evidence the deposition of Senator Avery.

MR. PREISLER: Your Honor, I have just been given that this morning, but I will presume that the reporter correctly took it down.

JUDGE MATTHES: You were present at the deposition, Mr. Preisler?

MR. PREISLER: Yes. I have not checked it, but otherwise I will assume it is.

JUDGE MATTHES: It will be received, subject to the same objection you made a while ago, Mr. Preisler.

Court will be in recess for about five minutes and perhaps you can get your witnesses lined up so we will move along.

(Recess—10:00 to 10:10)

THE COURT: Your next witness, Mr. Downey.

MR. DOWNEY: Thank you, Your Honor. We call the Honorable William Baxter Waters.

WILLIAM BAXTER WATERS,

called as a witness on behalf of the defendants, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. DOWNEY:

Q. State your name and address for the record, please, sir. A. William Baxter Waters, Liberty, Missouri.

Q. What is your occupation, sir? A. An attorney.

Q. What is your academic background leading up to your professional competency? A. Bachelor degree from William Jewell College at Liberty, Bachelor of Arts degree at the University of Missouri at Kansas City.

Q. Have you been a licensed attorney in the State of Missouri? A. Since 1941.

Q. Do you hold any public office in the State of Missouri? A. I am a member of the Missouri Senate from the Seventeenth District.

Q. Senator, how long have you been in the Senate? A. I was elected to the Senate in November of 1956, sworn in January of 1957.

Q. Do you hold any office in that body? A. I am the majority floor leader of the Senate.

Q. Now, have you held any other office in the past in that Senate body? A. Other than chairman of committees, no.

Q. Will you tell us some of the committees that you have chairmanned? A. Oh, I was chairman of the Criminal Jurisprudence committee, committee on Economics, committee on Rules, committee on Parks, Conservation and Forestry.

Q. Senator Waters, have you received legislative awards

from various private sources since you have served in the Senate? A. One or two.

Q. Would you recite these awards for the record, please, sir? A. Well, my first term I received the Globe-Democrat award for the outstanding senator, then in 1964 and 1966 I received the award for the outstanding member of the Legislature.

Q. Prior to serving in the Senate, have you held any other public office? A. I was judge of the Probate Court in Clay County from 1946 until 1954.

Q. In addition to the public offices which you have held, have you been the head of various civic organizations? A. Yes, sir.

Q. Would you tell us what some of these organizations are, sir, and the position that you held? A. Oh, back years ago I was chairman of the County Red Cross; I was District Governor of the Lions, President of the Probate Judges Association, are some that occur to me.

Q. Senator Waters, you have heard Representative Rabbitt describe generally his duties as majority leader of the House. Does that recitation of his duties correspond generally with those that you have in the Senate? A. They are basically the same. Of course, because of the difference in size of the two houses, the jobs do vary some, but basically they are about the same.

Q. There are 34 members of the Senate, is that right, sir? A. Yes, sir.

Q. Now, Senator, last night I discussed this matter with you at some length, and at that time you expressed a desire to have a map of the State of Missouri shownig the districts as drawn by the Act under consideration here this morning, together with the population of the counties in the State of

Missouri, did you not, sir? A. If I am going to be asked any questions relating to it, I would like to have the map in front of me, yes, sir.

MR. DOWNEY: I have here in my hand what has been attached to the plaintiff's trial memorandum, Exhibit B, and if there is no objection I will hand this to Senator Waters and he can have it available for reference in the course of his testimony.

That is your map, Mr. Preisler.

JUDGE OLIVER: It doesn't have the districts on it, does it?

MR. DOWNEY: It has the districts on it.

MR. PREISLER: If the Court please, rather than get into this consideration, there should be a correction on that map to place—may I see it a minute—to place Camden County in the Eighth District. The line should go around Camden County instead of below it. That was an error in copying the maps. I will put that in now. The line should include Camden County in the Seventh rather than in the Eighth.

Q. (By Mr. Downey) Now, Senator, did the enactment of a Congressional Redistricting Act and efforts to enact such an act become a part of your official duty during the course of the Seventy-fourth General Assembly and the session that ended on June 30, 1967? A. Well, at least I assume it was one to try to get a bill through, and put some impetus behind it.

Q. Now, what was the paramount factor which you considered in attempting to enact Congressional Redistricting legislation? A. Well, we were under the edict of the Federal Court to redistrict the State of Missouri, based on as equal population among the districts as possible, and, of course,

I think that was our primary desire, primary purpose in the new law, the new Redistricting bill.

Q. In attempting to guide the House Substitute through the Senate in the closing days of the Seventy-fourth General Assembly, did you consider this population factor in your action? A. Yes, I did. Of course, along with the primary desire to achieve as nearly equal population as possible, at the same time you have to come up with a plan that will pass and get the votes to go through, and any legislation is a matter of compromise. So secondarily below the population deal we had a bill here which we thought we could pass and at the same time one which would meet what we though the standards would be of the Federal Courts.

Q. Well, in examining the districts of the House Substitute when it came over to you in the Senate, what particular population consideration in the various districts occurred to you in that examination? A. Well, of course, it was apparent from the—well, number one, of course, we realized that there were some mistakes in it as were later discovered, but based upon the population which we thought to be at the time, it was apparent that the district with the low population was that of the Fourth. I commented on this to one or two House members, and it was then brought out that the Fourth District did contain Eastern Jackson County, which has exhibited probably as much or more population increase since 1960 than any other part of the State with the possible exception of St. Louis County or possibly Clay.

That was one observation we made. Another observation we made was that in the Eighth District, which was the high district, it was pointed out that it does contain Fort Leonard Wood, it does contain the University of Missouri, it does contain the City of Jefferson City, in which it is well known that many people do not vote in Jefferson City but vote at home.

So that was one point that was raised in justifying the fact that the Eighth District contained more people than perhaps the others, but so far as containing more voters was concerned, it probably didn't.

Q. Well, explain what you mean about Jefferson City in regard to some people voting at home? A. Well, I think the Court probably would take judicial notice of the fact that many, many people who work in Jefferson City are State employees who maintain their voting residence at their homes over the State of Missouri, they do not vote here, and consequently would not be voting in the Eighth District.

Q. Explain what you mean about the significance of the University of Missouri in the Eighth District? A. Well, students who are enrolled in colleges are counted in the census where they go to school, and that would be true in Columbia; it would be true in Rolla; it would be true at Lincoln University. I think perhaps you have a greater concentration of students proportionally in the Eighth District than in any of the other districts because, say for example, in St. Louis, St. Louis University and Washington University. I think a greater proportion of those students actually live in that area.

Q. Now, Senator, you have testified that population was your prime consideration in considering this legislation, but you have also testified that you gave recognition to the necessity of enacting an act? A. Passing a bill, yes, sir.

Q. Did you give recognition to any other considerations? A. Yes; as Mr. Rabbitt mentioned in his testimony, we gave recognition to the compactness of a district. There were historical factors involved. I can cite one for example, that Ray County in my district has always been in the Sixth District, or whatever district represented northwest Missouri. They wanted to stay there. They were leaning on me to try to get

them to stay there, and quite naturally I was aware and took cognizance of this historical factor in trying to keep them up there so long as we could come up with something which reached the standards on the population.

Q. Senator, I forgot to ask you how long you have lived in Liberty. A. About 35 years. I have lived in the Kansas City area all my life.

Q. Now, Senator, if this Court should invalidate this Act, what observations do you have to make in regard to the future enactment in time for the 1968 elections of another act? A. Well—

MR. PREISLER: If the Court please, objection to this on the basis this is pure speculation on his part, and it is really a conclusion of the witness here.

JUDGE MATTHES: Overruled. It will be heard subject to the objection. A. Well, in answer to your question, it is an established fact that it will be necessary to have a special session of the Missouri General Assembly sometime next year, because we have only appropriated for one year, so it has to happen. The Governor, as I understand, proposes to call that special session somewhere in the general area of January 15. Now, if we attempt at that time to pass another bill apportioning the congressional districts, unless it carries an emergency clause, the bill would become effective 90 days after we close the special session, which would be long beyond the closing deadline under the Missouri law, which is the last Tuesday in April.

Q. This 90 days, Senator, is pursuant to the Missouri Constitution? A. Yes, sir.

JUDGE OLIVER: Senator, would it be subject to both Houses agreeing and the Governor approving immediate effectiveness as an emergency matter?

THE WITNESS: You mean the filing deadline?

JUDGE OLIVER: Yes.

THE WITNESS: Well, as I recall, the filing deadline is a statutory matter and I suppose that we could extend that.

JUDGE OLIVER: No, I am talking about couldn't you—you being the General Assembly—provide that any new districting would be immediately effective rather than the 90-day period?

THE WITNESS: No, as I recall it, that is the Constitution, the effective date of the law.

Q. (By Mr. Downey) Senator, you started to say something about an emergency clause to the bill. A. Well, the Constitution provides that if a bill has an emergency clause on it, it becomes effective immediately on the signature of the Governor, but it does require a two-thirds vote of each body, which is extremely difficult to achieve on any matter which is controversial, which I know this would be.

Q. Were there any two-thirds votes in the last session on a Congressional Redistricting proposal that was before the Legislature? A. I would have to check the record to see on that. I don't think so.

Q. Senator, in your experience as a member of the General Assembly and in your experience as majority leader of the General Assembly, do you have an opinion whether or not the 1967 Congressional Redistricting Act is a reasonable legislative compromise? A. I would say yes.

Q. It is your opinion that it is a reasonable legislative compromise? A. Yes.

MR. DOWNEY: No further questions.

MR. COLLINS: I have no questions.

JUDGE MATTHES: Mr. Preisler.

CROSS EXAMINATION

BY MR. PREISLER:

Q. Senator Waters, you have testified that the various places such as Jackson County, St. Louis County and others change in population. You said Jackson County was the low as a congressional district figure, and that that particular county was increasing in population, is that correct? A. I said the portion of it which is in the Fourth District was increasing. That would include Eastern Jackson County.

Q. Why in the case of St. Louis County then, in which all the districts are high, with the exception of a little bit which is in the Ninth, that St. Louis County is all high and also has an increase in population? If you consider Jackson County, the home of your residence, why didn't you consider St. Louis County, which is a more extreme example in the direction of that particular suggestion that you have made? A. It wasn't a matter of my considering it. It was a matter of some justification for the lower figure in the Fourth District. No suggested change was made in my presence that the First, Second or Third District be reduced.

Q. But they are high districts, and it is well known that the population of St. Louis County is also increasing considerably. A. They are slightly over the average. The Third District is .95 percent over. The Second is 1.03, and the First is 1.79. There are those which are more over than those three.

Q. The Eighth District also goes into St. Louis County. A. As I understand, it is an area which perhaps has not grown as much as the Second. I am not a resident of St. Louis County, and I am not as much up on these facts as I would be in my own area.

Q. There was also a statement made that the population

of Jefferson City, Columbia, Fort Leonard Wood, and so forth, does not reflect the true population of that area.

MR. PREISLER: Your Honor, I would like to suggest that we are taking the official federal census. We have no way of knowing how many or to what extent all these figures occurred, that is, that might be possible if non-residents were counted in the tabulation of the census.

JUDGE MATTHES: The Court is aware of that.

MR. PREISLER: Another question is the effective date of a statute under an emergency clause. I would like to ask the Court to take judicial notice of the actual constitutional provision in that case. As I read it, if the bill itself asks for an emergency that the bill can be passed as an ordinary bill is passed, but if the bill, after its passage or during its passage, in emergency, as suggested, say from the floor by a committee, then this other provision would apply, would be in effect, namely, if the bill is declared itself to be an emergency, to begin with, that the ordinary provisions with regard to simple majority vote would apply.

I may be in error on that, and I ask the Court to take judicial notice of the constitutional provisions with regard to the emergency bills.

MR. DOWNEY: I have no objection to Mr. Preisler asking the Court to take judicial notice of the constitutional provision. I do object to any judicial notice of his interpretation of that provision, with which I vehemently disagree.

JUDGE MATTHES: I think the question before the Court is whether the plan that is promulgated meets the test laid down. It is just that simple.

MR. PREISLER: No further questions.

JUDGE OLIVER: Do you have any additional questions, Mr. Downey?

MR. DOWNEY: I have nothing further.

JUDGE OLIVER: Senator Waters, Mr. Rabbitt indicated that Hearing Exhibits A and B were seen by him as majority leader of the House. Did you also see these figures as majority leader of the Senate?

THE WITNESS: As I recall it, Your Honor, it was either the morning this matter was proposed to the House or the morning before that, Mr. Rabbitt, in company with one or two others, came to my office and said that they thought they had a compromise worked out, and he showed me Defendant's Exhibit A at that time. I don't recall seeing B.

JUDGE OLIVER: You understood, therefore, that the figures—first, let me ask you, you had no direct responsibility on any of these bills as far as serving on the committee?

THE WITNESS: No, sir, I was not a member of the committee.

JUDGE OLIVER: As majority leader you had to take what the committee and both houses produced?

THE WITNESS: Correct.

JUDGE OLIVER: The Eighth District on the figures that the Legislature apparently thought revealed population contained 439,984 population, and as I understand your testimony, this was to take care of the possible floating population, non-Missourian in nature, in the University of Columbia, School of Mines at Rolla, and Fort Leonard Wood?

THE WITNESS: Well, let me correct that, Your Honor. It wasn't the reason; it was one of the justifications, I would say.

JUDGE OLIVER: Suppose you had known that as a matter of fact when these compromises were going on, that the

actual population allocated to the Eighth District was not 439,000-odd, but 445,523? Actually, I assume it wouldn't have really made any difference because you were under duty as majority leader to get through whatever had resulted at that time, but did you know as a matter of fact that there was over 445,000 votes allocated for the Eighth District?

THE WITNESS: No, I was not aware of the fact that there were mistakes in the computation of population.

JUDGE OLIVER: I have no further questions.

JUDGE MATTHES: You may step down, Senator.

MR. DOWNEY: Next we would like to call the Honorable Thomas Woolsey.

THOMAS G. WOOLSEY,

called as a witness on behalf of the defendants, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. DOWNEY:

Q. State your name and address for the record, please, sir. A. Thomas G. Woolsey, Versailles, Missouri.

Q. What is your occupation, sir? A. I practice law.

Q. How long have you been a licensed attorney in the State of Missouri? A. 18 or 19 years.

Q. What is your academic background leading up to your professional competency? A. Two years of undergraduate work at Westminster College and graduate of the University of Missouri School of Law.

Q. How long have you lived at Versailles, Senator? A. 18 years.

Q. And where did you live prior to that? A. Well, my peo-

ple—my parents lived at Boonville. I was there some. I was reared in St. Louis County.

Q. Do you hold any public office in the State of Missouri? A. Yes, sir.

Q. What is that office? A. I am a member of the State Senate from the Thirty-Third District.

Q. How long have you been a member of the State Senate? A. Since 1960.

Q. Prior to that, did you hold any other public office in the State of Missouri? A. Not for the State. I was Prosecuting Attorney of Morgan County for six years.

Q. Prior to that, did you hold any public office? A. No, sir.

Q. Do you have any official position in the Missouri Senate in addition to being a member? A. I am Republican floor leader.

Q. Now, Senator, in your capacity as Republican floor leader, did you have certain responsibilities in regard to the redistricting legislation that came before the General Assembly in the Seventy-Fourth session? A. No, I wouldn't say that I did, other than after we had finally perfected the Senate bill, the Republican members of the Senate caucused and we determined what, if any, position we would take on voting on that bill. Prior to that, I did not.

Q. Did the Republican members in fact decide to oppose that bill, sir? A. The Senate bill?

Q. Yes. A. The bill that the Senate finally passed?

Q. Yes. A. I think they all voted for it but me.

Q. That is the House Substitute or is this the bill as it went over to the House? A. This is the Senate Substitute. I

voted for and spoke for and supported the amendment in the Senate, the bill that was finally adopted, and then I voted against the bill finally because of some debate that I had had with Senator Vanlandingham.

JUDGE MATTHES: I didn't get the last part of the answer.

THE WITNESS: I say then I voted against the bill because of some debate that I had had with Senator Vanlandingham, who was the sponsor of the Senate Substitute that we finally adopted and which I supported until the final vote.

Q. Now, later on, this bill went to the House, and the legislation as it came back to the Senate was a House Substitute for that Senate Committee Substitute? A. Yes.

Q. Now, did you, as majority leader, get your party together in any position on that bill? A. No., sir. As minority leader, I did.

Q. As minority leader. A. I wish it had been the other way.

JUDGE MATTHES: One member of the court might agree with you. A. Yes, we decided that the Senate bill was preferable to the House bill and we voted—there were several votes; I don't recall how many, but we voted, some members of the other party, to turn down the House bill and try to pass the Senate bill.

JUDGE OLIVER; Senator, why did you prefer the Senate bill to the House bill?

THE WITNESS: I thought it was fairer to the people.

JUDGE OLIVER: What criteria did you apply to reach that conclusion?

THE WITNESS: Well, Your Honor, I think that the—I

don't know whether the Court wants to be bored with my basic philosophy of Government, but that is the reason I felt that way. I feel that the representative in the House, whether it be the federal congress or in the state, wherever it is possibly, should be in a district that can go either way in an election, so that if the administration, regardless of party, is doing things that the people don't like, they can elect a representative in the other party and change it; and I thought the Senate bill, while it wasn't particularly favorable to the party of which I am a member, I thought that it was more favorable than the House bill which we finally passed, and I might further say, Your Honor, that I felt that it doesn't make any difference who draws it, there isn't a man in this room that couldn't divide the State on the 1960 population and come up with compact, contiguous districts that come within close equal population, but, on the other hand, you have to pass that bill through the Legislature, and I don't think that you can pass one that falls within the norm as set out under present criteria, and if you did, as Senator Waters brought before the Court, it would not carry out the so-called one-man-one-vote theory because of the changes of population we have had all over this State and all over the nation since 1960.

JUDGE OLIVER: Senator, in that connection, this same argument was made to this Court in regard to the 1965 Act, and this Court was assured that the very best job that could be done as a matter of political compromise was the change made by the Seventy-third General Assembly over the work of an earlier General Assembly. The 1967 Seventy-fourth General Assembly made very, very substantial improvement over what we were assured was the best that could be done.

Are you totally confident that the State of Missouri is incapable of doing the same or a comparable job that the

State of Michigan, State of Kansas, other states that have in fact—

THE WITNESS: I don't know what the political makeup of the Assembly of Kansas or Michigan is, but I know what ours is, and when you have two to one majority on a political basis, I think that anything you get will be a compromise, and you have to have, I think, the members of the majority party who have the votes to pass the bill, whenever they compromise among themselves, then the few of us that are there when we have whatever influence we have, I think that that is what you are going to get.

JUDGE OLIVER: The highest responsibility actually rests on the majority party in a political situation that you speak of.

THE WITNESS: I think so, yes, sir, and I think, regardless of how it is, if it were two-to-one the other way in Missouri, it would still be the same situation.

Q. (By Mr. Downey) Senator, based upon your experience in the General Assembly, based upon your experience as minority leader of the General Assembly, do you have an opinion whether or not the 1967 Congressional Redistricting Act is a reasonable legislative compromise? A. I think, considering the present makeup of the General Assembly, that it was.

MR. DOWNEY: Thank you, sir. No further questions.

JUDGE MATTHES: Mr. Collins.

MR. COLLINS: No.

JUDGE MATTHES: Mr. Preisler.

MR. PREISLER: No.

JUDGE MATTHES: You may step down. Thank you, Senator.

MR. DOWNEY: We will call the Honorable R. J. King.

R. J. KING, JR.,

called as a witness on behalf of the defendants, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. DOWNEY:

Q. State your name and address for the record, please, sir. A. R. J. King, Jr., 816 South Handley Road, Clayton, Missouri.

Q. What is your occupation, Mr. King? A. I am an insurance broker. I have an insurance agency.

Q. Mr. King, would you recite for the Court your academic background? A. I attended the University of Missouri for a year and a half, graduated from public schools.

Q. In addition to this academic background, do you have certain honorary academic background? A. I received an honorary degree from St. Benedict College this last spring, where I have been a member of the Board of Trustees for some eight or ten years.

Q. What was that degree, sir? A. Honorary degree of law, Doctor of Law. Unfortunately it doesn't permit me to practice, I understand.

Q. That gives you the privilege of advising the lawyers rather than practicing? A. That is right; advise rather than practice, without fee.

Q. Now, Mr. King, what public office, if any, do you hold in the State of Missouri? A. I am a member of the Missouri House of Representatives from the Thirty-Ninth District in St. Louis County.

Q. How long have you been a member of the Missouri House? A. Well, I have been a member two different times. I

was a member from Franklin County for six years, 1943 to 1949, and then was elected to the House from St. Louis County in 1958, and have served continuously from St. Louis County since this time, a total of eight terms now.

Q. A total of eight terms? A. Completing my eighth term.

Q. Mr. King, do you hold any official position in the General Assembly other than being a member from your district? A. I am the minority floor leader, Republican floor leader of the House.

Q. Have you held any other official positions in the General Assembly in the past? A. I was majority floor leader of the Missouri House in the Sixty-fourth session, 1947-48.

Q. Mr. King, did you have any duties in regard to your party and your official position in the Missouri House concerning the 1967 Congressional Redistricting Act? A. Well, certainly as the minority leader I advised with our members, both those who were on the Congressional Redistricting Committee of the House and with the members in caucus, and individually, as minority leader.

Q. I believe the record reflects, sir, that you voted, and a good many members of your party voted, against the House Substitute which eventually was enacted, is that right, sir? A. I believe that is right. If I recall, I think a great majority of the Republican members voted against the bill which eventually became law.

Q. Would you tell the Court generally the reasons for this opposition? A. Well, by the same token, most of our members supported the Senate Committee Substitute that came over to the House and which was heard by the House Committee and which then was before us after the House Committee Substitute was adopted, because we felt that it was a fair and equitable distribution, or as fair as we could hope

to have, and that it gave—actually, as far as we were concerned, it gave better representation to the minority party insofar as congressional redistricting was concerned than did the House Substitute which we first voted upon and as did the House—or the House Committee Substitute which was first voted on, and then the House Substitute which we later voted upon.

Q. The position generally of the minority party in regard to the House Committee Substitute was about the same as it was in regard to the House Substitute? A. No, no, it was a little different, I would say, I think we were very much opposed to the House Committee Substitute. Our opposition was not as much against the House Substitute. We voted against it because we felt that the Senate Committee Substitute was fairer to our party in congressional redistricting representation, and in that respect we thought it was a better bill, a stronger bill, because it did give more credence to at least a semblance of a two-party system, added to its strength, in Missouri, which we felt that the House Substitute did not, and in fact the present law did not lend itself to this kind of a situation.

Q. Mr. King, based upon your experience as a member of the General Assembly, and based upon your experience as a former majority leader of the General Assembly and based upon your experience as a present minority leader of the General Assembly, do you have an opinion as to whether or not the 1967 Congressional Redistricting Act is a reasonable legislative compromise? A. I believe, in retrospect, that it is a reasonable and fair compromise. I would say that most of our opposition to the House Substitute came from, one, the fact that we did not have a real good opportunity to see this bill, this substitute, we really didn't know what it did, and I think this is evidenced by the fact that the errors in the population figures showed up, and, two, that some of our

members felt that their own respective individual districts were not being treated as fairly in the House Substitute as they were in the Senate Committee Substitute, and on this basis I believe is the reason that we had almost unanimous opposition to the House Substitute, but I think in retrospect it is a reasonable and fair or as reasonable and fair as we could hope to have passed in the Missouri House in its present composition.

MR. DOWNEY: Thank you, Mr. King. No further questions.

JUDGE MATTHES: Mr. Collins?

MR. COLLINS: No questions.

JUDGE MATTHES: Mr. Preisler.

CROSS EXAMINATION

BY MR. PREISLER:

Q. Mr. King, apparently you gave more attention to the question of getting the bill passed than you did to the population. A. Well, no, I wouldn't say that. We were very much interested in the population, but by the same token I would say that when you look at the variances in the population, there isn't enough discrepancy for us to take the position that there should be an at-large election rather than to take a bill that we may not think is completely satisfactory to us and yet it would be a fair compromise against an at-large election.

Q. In an at-large election, all that occurs is, there is no bill passed, and did you examine the bill, the map of the bill and its population of the counties and the like just before you voted on the bill? A. Yes, we examined it. We tried to know what we were doing. It was rather hard, I would say, because of the fact that it had come on the floor as a Substitute. We hadn't had much opportunity to see it, and

we voted against it as the record indicates, and as I indicated in my testimony prior.

Q. As minority floor leader, did it ever occur to you personally that the bill could be improved and made more close to the required population equality if a few counties had been shifted? A. Well, I assume that is right, yes, and we felt that there were some changes that could be made, but again we are certainly not in a position to control it completely, and maybe if we had been in control we would have tried to write a bill that would have complied more completely, but I doubt if we could have arrived at that situation. I doubt seriously if in the present makeup of the present assembly—and I don't mean political makeup necessarily as I do the regional makeup. I question seriously had we been in control—we may have changed the boundaries to some extent, but I question seriously if we could have come up with a better bill insofar as population discrepancy is concerned. We may have changed the political complex of it, I assure you, had we been in control, but I question on the basis of regional makeup, not political makeup, whether or not we could have changed the population discrepancy to a nearer equal basis than that which is contained in the bill which finally passed.

JUDGE OLIVER: Mr. King, what do you base your conclusion on?

THE WITNESS: Well, I think there are problems which exist, and I think the Senator from Liberty expressed some views on this, which we know that a voting makeup of the district, like the Eighth, where you have the entire Fort Leonard Wood population—we ran into the same thing in the House Redistricting, or at least the Commission did, the population of Cole County, because of the State employee situation, the population of Boone County, because of Columbia, Missouri. I think, too, that we were working with a

legislative body that was elected on a 1966 basis with a population on a 1960 basis and this was a rather unique situation, and I think that the areas that the men represented, they felt they had an obligation to their people, which I am sure they did have, which I think they probably discharged that obligation as they saw fit to do, and for this reason, I question, Your Honor, whether or not either party that controls the House could have come up with a bill that would have been more equitable insofar as the population figures were concerned. I don't say that we couldn't have changed the political complex of it to some extent.

JUDGE OLIVER: Did you as minority leader in the House also operate under the impression that the figures on the map that have been introduced in evidence were the accurate figures?

THE WITNESS: Are these the first figures that were furnished to us, Your Honor? I can't remember these figures from memory. But at least we operated on the theory that the population of these districts were those which were furnished to us the day the House Substitute was introduced.

JUDGE OLIVER: Did you know that only two of the ten districts were accurately reported?

THE WITNESS: Since the session adjourned I have understood that. I didn't see the figures until just today, the actual figures.

JUDGE OLIVER: Yesterday was the first day that you knew that the figures under which the compromise that all witnesses have outlined were not accurate figures?

THE WITNESS: Not yesterday. I think I knew it earlier than that. I wouldn't say yesterday, but I didn't know the exact figures difference until this morning.

JUDGE MATTHES: Thank you, Mr. King.

MR. DOWNEY: We have no further witnesses, Your Honor.

JUDGE MATTHES: Mr. Preisler, do you desire to call any witnesses?

MR. PREISLER: Your Honor, in view of my previous statement that I felt the witnesses should be excluded entirely as being unnecessary, in view of the fact that the map that is documentary evidence and the various other matters of which the Court might take judicial notice, plaintiffs will not call any witnesses.

JUDGE MATTHES: Very well.

MR. PREISLER: Except I have to introduce some exhibits, and I think the easy way to introduce them for the record would be to place the plaintiff himself upon the stand as a witness.

JUDGE MATTHES: However you want to handle it, Mr. Preisler.

MR. PREISLER: Well, I think that would be better.

JUDGE MATTHES: It may be counsel will agree.

JUDGE OLIVER: Have you shown these to counsel?

MR. PREISLER: Practically all of them. There are some matters that came in this morning.

JUDGE MATTHES: We will recess for about five minutes and counsel will take a look at them.

(Recess—10:55 A.M. to 11:05 A.M.)

JUDGE MATTHES: Have you gentlemen reached an agreement on the exhibits?

MR. PREISLER: With regard to those that will be acceptable and those that will not, and I will offer the one that is not and we will submit that to the Court.

Your Honor, there are a number of exhibits that plaintiff would like to offer which will complete the number of exhibits that have already been submitted. One is a letter from the Department—

JUDGE MATTHES: What is the number?

(HEARING PLAINTIFF'S EXHIBIT A WAS MARKED FOR IDENTIFICATION)

MR. PREISLER: It is No. HP-A, a letter from the Department of Commerce, Bureau of Census, dated October 31, 1961. It is a correction upon a bulletin, Exhibit 3 in the previous case. That is Item 29 of the stipulation. It gives a corrected figure for the wards at that time, 1961, on Page 10 of the Exhibit 3, just if the Court wants to use this at some time for a reference.

(HEARING PLAINTIFF'S EXHIBIT B WAS MARKED FOR IDENTIFICATION)

MR. PREISLER: Exhibit HP Exhibit B is a letter from the Department of Commerce, Bureau of the Census, on Official Cost Estimate and Acceptance, Reimburseable Work for Services. This letter was received by me on Saturday, October 21, 1967, in reply to a telephone conversation with the Bureau of the Census, asking them the cost and the time necessary to prepare certain information, namely, the cost of the correct ward population for each ward of Kansas City.

(HEARING PLAINTIFF'S EXHIBIT B WAS MARKED FOR IDENTIFICATION)

MR. PREISLER: HP Exhibit C, a similar letter, Official Cost Estimate and Acceptance, from the Department of Commerce, Bureau of the Census, which gave me an estimate, a letter which I received on the 21st of October 1967, an estimated cost and time required to prepare the correct popula-

tion according to the Census Bureau of all of the precincts of St. Louis County.

(HEARING PLAINTIFF'S EXHIBIT D WAS MARKED FOR IDENTIFICATION)

MR. PREISLER: Merely to correct the record, HP Exhibit D with the map which was testified to by one of the witnesses today in which the correction is made in which Camden County is included in the Seventh instead of the Eighth. This is a corrected Plaintiff's Exhibit B.

JUDGE MATTHES: The defendants have agreed to admit these four items in evidence?

MR. DOWNEY: We agree, Your Honor.

MR. COLLINS: That is correct, Your Honor.

(HEARING PLAINTIFF'S EXHIBIT E WAS MARKED FOR IDENTIFICATION)

MR. PREISLER: As a fifth item, HP Exhibit E, which is a map of the new congressional districts in the city and county taken from the St. Louis Post Dispatch, July 6, 1967, a map prepared as shown on the map by Mr. Albert Sweitzer of the St. Louis Post Dispatch, artist. This was included in Plaintiff's memorandum, and the map without the text—with the text torn off, is offered in evidence for the purpose of giving a general picture of the location of the various congressional districts as the final bill was passed in St. Louis County and St. Louis, for the information of the Court. I offer it in evidence.

MR. DOWNEY: Now, Your Honor, we object to the admissibility of this exhib into evidence. We have examined the map and we are unable to tell the Court whether or not the districts as outlined on the map accurately reflect the general geographical description of those districts, and we

simply don't know anything about the reliability of this particular map, and therefore we object to it.

MR. COLLINS: May it please the Court, the intervenor defendants also object to HP Exhibit E because of lack of identification and any evidence as to accuracy or authenticity.

JUDGE MATTHES: The Court has been rather liberal in receiving in evidence any exhibits and we will receive this exhibit, including the last one. The last one is subject to the objection.

MR. PREISLER: I submit them for what they are worth and giving the general picture of the districts in St. Louis County.

JUDGE MATTHES: Anything further now, gentlemen? What about oral argument? Do you care to argue it? I might state in advance what the Court's position is. I think we are fairly conversant with the issues that are involved here. However, if you want to argue it, we will give you some time to do so. I believe we are pretty well informed. I think we know what the issues are.

MR. PREISLER: I understand we will be given a reasonable time for preparation—

JUDGE MATTHES: We will reach that question next. What do you say about the oral argume..ts, gentlemen?

MR. DOWNEY: Your Honor, we will be glad to offer a short oral argument. Our position has been pretty well developed in our trial memorandum.

JUDGE MATTHES: That is the reason the Court has taken the position it has. I think the question has been fully briefed by all parties, and the issue has been delineated, and I think we are conversant with the situation.

MR. DOWNEY: I might say in connection with our trial memorandum, we have cited two cases which are not reported, and we did not have copies of those cases available at the time we filed the memorandum. We do have this morning. We would be glad to file copies of those decisions.

JUDGE MATTHES: Well, suppose you send us a brief memorandum giving the brief citation of those cases.

MR. DOWNEY: I don't think they are reported, Judge.

JUDGE MATTHES: What case were you referring to?

MR. DOWNEY: I am referring to the case of **Connor** against **Johnson.**

JUDGE MATTHES: That is a Mississippi case?

MR. DOWNEY: A Mississippi case, and—

JUDGE MATTHES: Well, you refer to that in your brief, I believe, Mr. Downey.

MR. DOWNEY: I refer to it in the brief. The case is not reported, and I thought the Court would like to have the full text of the decision.

JUDGE MATTHES: Yes, we would like that.

MR. DOWNEY: And the same thing is true of the North Carolina case, **Drum v. Seawell.** It is not yet reported.

JUDGE COLLINSON: It came out in this week's advance sheet.

JUDGE OLIVER: 371 F.Supp. Mr. Downey, you argue in your brief that the congressional reapportionment case from the Southern District of Mississippi was affirmed by the Supreme Court of the United States. Have you checked sufficiently close to know whether or not that portion of the case as distinguished from the State reapportionment reported in 265 F.Supp. 492 was in fact the only portion of the

order that went up from the Southern District of Mississippi and affirmed in 386 U.S. at Page 483?

As I read the Mississippi situation, the first Mississippi three-judge court was 256 F.Supp. 962. Both the State apportionment and the congressional apportionment was attacked, but the opinion was confined solely to the State reapportionment, which was held to be unconstitutional, and that opinion noted that the Mississippi Legislature had in fact passed a congressional act. The unpublished opinion approving the congressional act is reported September 28, 1966, from which, so far as my knowledge is concerned, was not appealed at all.

Conner v. Johnson later had the second State reapportionment, reported in 265 F.Supp. at 492, and that case dealt specifically and restrictively with State reapportionment, which again was held unconstitutional, and the Supreme Court affirmed, in either a one or two-sentence opinion, I have forgotten which—sometimes they advance on the docket and affirm or reverse in the same sentence and sometimes it takes two sentences—but, at any rate, the affirmance was in 386 U.S. 483.

Now, it would be apparent only from the reporting but not from an accurate search of the court records that the approval of the Supreme Court of the United States was only of the reversal of the affirmance of the declaration of the unconstitutionality of the State reapportionment.

Have you checked out the actual court record to know whether your statement that the congressional case itself had been affirmed by the Supreme Court is accurate?

MR. DOWNEY: Yes, Your Honor, we have inquired of the Attorney General's office in the State of Mississippi about this matter, and the Attorney General's office has furnished us with a copy of the jurisdictional statement

which was filed by the appellants in the Supreme Court of the United States, and the jurisdictional statement is devoted solely and exclusively to the affirmance by the lower court of the congressional redistricting act, and therefore the citation to the decision of the Supreme Court of the United States which we refer to was made on the motion of the Attorney General's office of the State of Mississippi to affirm the judgment of the lower court based upon these issues which were raised in the jurisdictional statement attacking the affirmance by the lower court of the congressional redistricting act.

JUDGE OLIVER: What does the brief state as to the report of the opinion below?

MR. DOWNEY: Pardon me, Your Honor?

JUDGE OLIVER: The jurisdictional statement filed in the Supreme Court of the United States should have a section in which the attention of the Supreme Court of the United States will be directed to the opinion below. Now, is the citation given in that 265 F.Supp. or an unreported opinion?

MR. DOWNEY: It is an unreported opinion, Your Honor.

JUDGE OLIVER: I think it would be helpful if you would furnish the Court with copies of that, too.

MR. DOWNEY: Very well.

JUDGE MATTHES: Now, Mr. Preisler, you have indicated you want to file another brief.

MR. PREISLER: Well, it was my impression in the conference that was previously held that the opportunity would be given to file another brief. Now, there has been some new evidence come in here and new comments made in the Attorney General's memorandum, which I only received last Fri-

day, with a long list of statements with regard to what has occurred in other states. I have not checked the accuracy of that. I don't know whether any of these are correct. For example, if the Attorney General himself had been asked a month ago as to what the population of the districts in Missouri under the last act was, he would have given what he gave originally in this court which was on file in the Secretary of State. I mean I don't blame him or anyone else for the inaccuracies, but the inaccuracies were there. In the same way we do not know then what the inaccuracies in—

JUDGE MATTHES: Can you file another brief in five days, Mr. Preisler?

MR. PREISLER: Well, yes, I think in view of the situation today, there are other matters I would like to bring out, like the reason for the letter from the Census Bureau, namely, that these matters such as St. Louis County precinct populations could have been obtained at a reasonable fee for the Legislature and the like.

JUDGE MATTHES: Very well, if you can file one in five days. Does the Attorney General or the intervenors desire to file additional briefs?

MR. DOWNEY: Well, Your Honor, upon examination of the additional brief of Mr. Preisler, we might want another five days to reply to it.

JUDGE MATTHES: Why don't you, both sides, file additional briefs within five days, if you care to file them simultaneously. We want to try to dispose of this matter as expeditiously as possible.

MR. DOWNEY: Your Honor, in regard to the Mississippi decision, we have copies of that opinion in the court this morning, which we can leave with the court. We do not have copies of the jurisdictional statement. We can prepare those and mail those to the Court.

JUDGE MATTHES: Very well, and mail a copy to Mr. Preisler.

MR. PREISLER: May I ask the Court whether they have a copy of **Gong v. Kirk**, which was in litigation only as late as two or three weeks ago?

JUDGE MATTHES: There is one of those opinions that is published, because I have read it.

JUDGE OLIVER: What state?

MR. PREISLER: A motion was filed as late as the end of September in that case.

JUDGE MATTHES: Isn't that the Florida case?

MR. PREISLER: That is the Florida case.

JUDGE OLIVER: We have the Florida case.

MR. PREISLER: You say five days. That would be a week from today.

JUDGE MATTHES: Yes. What is today? Today is the 23rd: We will get them in on or before the 30th. We will stretch it and give you seven days.

MR. PREISLER: Thank you.

JUDGE MATTHES: Very well, the case is submitted. Court will stand adjourned subject to call.

* * 11:20 A.M. * *

(REPORTER'S CERTIFICATE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE AND APPEARANCES OMITTED IN PRINTING)

(JURAT OMITTED IN PRINTING)

(STIPULATION OMITTED IN PRINTING)

OMER H. AVERY,

a witness, being first duly sworn in the above cause, testified on his oath as follows:

DIRECT EXAMINATION

by Mr. Wood:

Q Senator Avery, would you please state your full name? A Omer H. Avery.

Q And what is your occupation? A Attorney, and member of the State Senate.

Q From what Senatorial District? A The 21st.

Q Senator Avery, would you state what your action in the 74th General Assembly in relation to Congressional Redistricting was? A I was appointed Chairman of the Redistricting Committee, Reapportionment Committee, it was called.

Q In connection with this duty, did you have occasion to introduce in the Senate of the Missouri Assembly a bill relating to Congressional Districts? A Yes, Senate Bill No. 182.

Q Would you describe what considerations you used in formulating this bill that you introduced? A Yes. In the first place, I took into consideration the population of the various districts which we had had previous experience on,

redistricting, and I wanted to have the bill as introduced as nearly equal in population as I thought was possible. However, in introducing this bill, the census figures for the various wards as they had been changed, and the townships in St. Louis County, had not been made available. And this bill was based solely on the 1960 census, and the conformation of the wards in St. Louis and the townships in St. Louis County, and likewise in Jackson County. They conformed with the '60 census and not with the subsequent changes.

Q Senator, were you aware when you were preparing this bill of the decision of the Federal Court, Western District of Missouri, about representation to the 1965 Congressional District Plan? A Oh, yes, I was aware of that.

Q Had you read the opinion? A I have read the opinion, yes.

Q And were you aware of the requirement that Congressional districts be equal in population as nearly as possible? A As nearly as possible, and that was—I realized when I introduced this bill that there would have to be a substitute because I knew the changes had been made in St. Louis, St. Louis County and Jackson County and that there would be a required, a substitute required to conform to the present figures.

Q You were not aware of what the correct population figures for St. Louis, St. Louis County, Kansas City and Jackson County were? A We were waiting for that information. We were waiting for the changes. We were then four weeks into the session.

Q Now, after introducing your bill, what was the subsequent action taken with regard to your bill? How was it handled in the Senate? A In the committee. Of course, the bill was introduced in the Senate, was read the first and second time and then sent to committee.

Q Were you a member of that committee? A Yes, it was sent to the committee, the Reapportionment Committee, of which I was chairman.

Q Would you briefly tell us what happened to your introduced bill? A In the committee then, subcommittees were appointed for the St. Louis area and the Jackson County area with the idea that they would obtain the information on the latest information concerning conformation of these areas and report back to the committee so that we might formulate a committee substitute, which we did.

Q Now, was the duty of these subcommittees to ascertain current population figures, among other things, for these areas of St. Louis and Kansas City? A Current population figures and the formation, the geographic formation of the wards and townships.

Q Who were on these committees, these subcommittees, can you recall, for each area, St. Louis and Kansas City? A Let's see, in St. Louis, I think—I don't recall. I wouldn't want to say because I don't have that, those records with me. I can tell you part of them. I would be afraid I would miss someone.

Q Could you do that? A Yes, I know Senator Young was a member.

Q He is from the St. Louis area? A The St. Louis area. Senator Clifford Jones was a member and I am inclined to think that Senator Kinney was. I don't recall. I think he was a member of that subcommittee.

Q Those three Senators were from the St. Louis area? A At least those three, but there might have been another. I don't recall. In Kansas City I remember specifically Senator Ryan. There was somebody else up there in the Kansas City area. In the outstate, Senator Spradling and I think perhaps Senator Cason might have been one in the Kansas

City area, in that district up there. And Senator Spradling and—I don't recall.

Q Now were correct population figures and ward and township boundaries for the St. Louis area supplied to you by any of these Senators that you have named for your work in the committee? A Well, I would have to assume that they were correct. They were supplied.

Q They were supplied to you? A Yes, they were supplied to me. In St. Louis, the city of St. Louis, through the Board of Election Commissioners, I think Mr. Leitz. The St. Louis County Senator, Senator Jones, obtained these figures from the organization in St. Louis County that takes care of the election matters. And Senator Ryan talked to Mr. Matthews, the secretary of the Jackson County Board, and Mr. Matthews mailed direct to me the figures from Jackson County.

MR. WOOD: Will the parties stipulate that Senator Avery was supplied with population figures for the St. Louis County townships as they are reflected in exhibit, stipulated Exhibit No. 23, and population figures for the wards in St. Louis City as they are reflected in stipulated Exhibit No. 18?

MR. COLLINS: We will so stipulate.

MR. PREISLER: I will stipulate that, but I think here we might put in approximately when the committee received this information.

Q (by Mr. Wood) Can you supply us with that information? A It was during the month of February, and I would say during the month of February because we didn't take any further action.

(DEFENDANT'S EXHIBITS A, B, C AND D WERE MARKED FOR IDENTIFICATION BY THE REPORTER).

Q (by Mr. Wood) Senator Avery, I show you what has been marked Defendant's Exhibit B and ask you to identify it. A That is a map of the wards of the City of St. Louis furnished to me by the Board of Election Commissioners with the population figures for each ward, some of which I have written over in ink because they were hardly legible, and I did that for my own convenience in referring to the map.

Q To the best of your recollection, where did you receive this map? A That was mailed to me.

Q By whom? A By the Board of Election Commissioners, I assume Mr. Leitz, but I don't know.

Q Approximately when did you receive this? A That would have been in the latter part of February.

MR. COLLINS: By "this" you were talking about Exhibit B?

Q (by Mr. Wood) Exhibit B, it is? A Yes.

Q Senator Avery, I notice under Ward 6 on Exhibit B and under Ward 28, and under Ward 25 some alternative figures are expressed, for instance, under Ward 28, "or 22,392" has been written in in ballpoint pen. Would you explain these notations, please? A Well, the one on No. 6, on Ward 6, I recall specifically that at the time I looked at it, I thought, and I made a notation on there, so I would check it, I thought it was 15,595 and I just made that notation for my own convenience. It was 18,595. Now in Ward 28, I recall that at one time when this bill was passed out of committee and before it was taken up in the Senate, we ascertained that because of the very peculiar formation of one of the townships in St. Louis County, to which Ward 28

was supposed to be attached, lacked about a block or two of the city of being attached because of a V-shape in the township, so we took out several wards, 18, 19, 20, 21 and 22, I believe, but anyway some of these wards and I am quite sure that probably, I'd say "or 22,392" as it would have been changed if we had made that change.

Q Would that have been removed precincts from that ward? A Yes, precincts 22, 21 and 20.

Q From Ward 28? A Yes. That was merely a notation of mine, which has not particular significance on the outcome of the bill or anything. Now then you said there was another 29,349 or 27,514 in Ward 25. I have two different indications in pen there of different populations. I think they were based on whether or not we would split up precincts from that ward. That is all to my best recollection of it. They were merely notations from my working on them to make me remember to look up some feature of the bill.

Q Senator Avery, was this Defendants' Exhibit B utilized by you and your committee during the deliberations on Senate Bill No. 182? A Yes, sir.

MR. WOOD: I offer this into evidence, Defendants' Exhibit B.

MR. COLLINS: No objection.

MR. PREISLER: No objection.

Q (By Mr. Wood) Senator Avery, I show you what has been marked Defendants' Exhibit C and ask you to identify it. A That is a map of Jackson County setting out the various townships with the population figures shown on each, and this is the condition that this was in when I received it. It was mailed to me by a Mr. Matthews of the Board of Election Commissioners of Kansas City. I think he is secretary of the Board.

Q Senator, you said townships of the county. Did you mean wards of the city of Kansas City? A Oh, yes, I believe it is. It has wards in it. It is wards in Kansas City, wards of the city, yes.

Q Senator Avery, there appears on Defendants' Exhibit C red numerals. Would you tell us what the source of these red numerals is? A I don't know the source. They were on there as they are when I received the may.

Q When you received the map? A Yes. I assume that the source would have been some member of the Board of Election Commissioners up there, or the secretary, but I don't know.

Q What did you interpret the significance of these numerals? A The population of the various wards set out on the may.

Q The current populations? A As they appeared in 1966, I believe it was, as they appear now, as they exist now, yes.

Q Senator Avery, did your committee use Defendants' Exhibits C, in other words, in its deliberation on Senate Bill 182? A Yes, were were guided by it and adopted those figures.

MR. WOOD: I offer this into evidence, Defendants' Exhibit C.

MR. COLLINS: No objection.

MR. PREISLER: Well, I will object until the time that these figures are shown, the source of these figures are shown.

MR. WOOD: You mean subject to these—

MR. PREISLER: If they match where he says they got the, if they match that sheet.

Q (by Mr. Wood) Senator Avery, a moment ago you re-

ferred to a Mr. Matthews as the source, as the supplier to you of Defendants' Exhibit C. Did you intend to say Mr. Matthews? A Since then I have referred to a letter that I received from Mr. Matthews and he sent me the map, the precincts maps covering Jackson County outside Kansas City and it was Mr. Martin that sent me the Kansas City map.

MR. WOOD: Mr. Preisler, do you still object to the Defendants' Exhibit C?

MR. PREISLER: No, not as it has been explained, the source of the figures as Mr. Wood and I determined came from an estimated population made by Mr. Martin or someone in the office of the Board of Election Commissioners at Kansas City.

Q (by Mr. Wood) Senator Avery, could you relate to us what considerations your committee used in their deliberations on a Congressional districting plan, specifically Senate Bill No. 182?

MR. PREISLER: I am going to make an objection that this is the conclusion of the witness.

MR. WOOD: All right.

WITNESS AVERY: We gave consideration to several elements, primarily the population of the various districts attempting to equalize them as much as we could and felt would be acceptable, under the previous ruling of the Courts. It was also the desire of the committee that the districts, the ten districts be changed only as much as would be necessary to make them come within the population limitations and not try to make any political complexion changed designedly as to any particular district.

The next consideration that we adopted was that the districts should be made, the conformity of them should be as compact and as regular as was feasible. In doing this,

District No. 8, it was just like squeezing a sponge and the middle was District No. 8. I want to explain one thing for the record. In District No. 8 that we gave consideration to and we had cognizance of, District No. 10 has 423,866 population. District No. 8 has 439,984. There was a suggestion and consideration that Dent County be put into the 10th District rather than the 8th District and we weighed that, and after consideration, we felt that population-wise 10 without that county would be only a little over 2% under and that 8 with that county would be approximately 2% over. But we felt that it would be more logical and it would be more regular, the lines would be more regular and that it would look a little better as far as District No. 8 is concerned to put Dent county in District No. 8 and that was the reason for Dent county being there.

I think we gave it due consideration. I think it's a valid reason for that and the committee so felt. And that does explain that matter that would, we felt, that the consideration of regular lines was as important as that of population, where it was within reason and we felt that 2% one way or the other was within reason.

Q (by Mr. Wood) Was within reasonable variation from the population standpoint? A Yes, and we thought it would make District 8 have a little better and more appealing figure than if you put Dent in No. 10.

I might say it's mighty easy to sit before the fireside and divide this state, and either one of us could do it very much better than this is done perhaps, but when you got 163 members of the House and 34 members of the Senate and everybody having equal privilege, right to consider a redistricting, it soon gets away from one man's thought about the state and how it should be districted.

Q Senator Avery, I show you Defendants' Exhibit A

and ask you to identify it. A I do identify it. I want to make one suggestion or correction in this exhibit.

Q Would you please first identify it. A I beg your pardon. This is the map of the state of Missouri and the counties as it was divided under House Substitute for Senate Committee Substitute for Senate Bill No. 182.

Q Does this exhibit reflect your markings in any way? A Well, I would say they are my secretary's.

Q Which markings are those? A That is everything in red. The divisions, the division lines and the population figures.

Q Your secretary made these entries? A She made those entries with me. We worked together on it.

Q The map itself, where did you obtain it? A I had hundreds of these maps. Do you want to know its inception?

Q Yes. A The inception of that map goes back to 1961 when I got a map of the state of Missouri and that is all my handwriting, the figures in there, taking the census figures of each county and of the City of St. Louis and of St. Louis County and putting them in the map so that when you consider the map, you can get your population of your counties readily without referring to the census figures all the time.

Q On the original print or proofs, you personally inserted from the 1960 census bureau publications the population for each county? A That is correct.

Q On that map? A That is correct. And I want to make one correction on this map which was not ascertained until 1967 when we did this redistricting. Dade County for some unknown reason, I put 12,647 people in Dade County, when as a matter of fact Dade County has a population of 7,577. So, as I recall it, that is a 5,070 less, and the figure for District No. 7 of 436,769 should be reduced by 5,070.

Q Now, at what course of the legislative history of Senate Bill No. 182 did you prepare this map insofar as the red markings are concerned?

MR. COLLINS: By "this" you mean Exhibit C?

WITNESS AVERY: Defendants' Exhibit A.

Q (by Mr. Wood) Defendants' Exhibit A? A Well, let's see. I would have to refer to this to tell you. It was whenever this bill came back, or whenever it was passed by the House over there. June 19, if I remember correctly. On or about June 19, 1967.

Q That is you and your secretary prepared this map reflecting the district as drawn in House Substitute for Senate Committee Substitute for Senate Bill 182 at the time the House Substitute was returned to the Senate? A Well, it was probably at the time it was introduced in the House. It was sometime during the time it was being considered by the House so we would have some information about it before it got to the Senate.

Q Senator Avery, Mr. Preisler in his pleadings that have been filed with the Court has suggested as an example of how a more equal population between the 8th and the 10th Districts could have resulted that certain townships in Texas County, Missouri, could have been shifted from what is in the 8th District according to the House Substitute for the Senate Committee Substitute those townships could have been shifted from the 8th to the 10th District. Did your committee consider such a possibility. A No, sir.

Q Would you indicate to us whether your committee gave consideration to a shifting of any of those counties from the 8th to the 10th District or splitting any counties in the 8th District so as to give the 10th a greater population? A Let's talk about the splitting. The committee and I think it was the concensus of the entire legislature that we should avoid

splitting a county if at all possible. And that is what we tried, that is what we did. We didn't split any counties, except of course the St. Louis County and Jackson County.

Q Could you give us your reasons for reaching this conclusion that counties other than St. Louis and Jackson Counties should not be split? A Well, one reason would be that it would be disrupting to the election processes in the county. But the main reason was that we just felt it was not, that our populations could be divided within a range of a couple of degrees one way or the other, and the other, not disturb the counties and the people in the counties by being divided. A Mr. Preisler also suggested to the Court that Texas County might easily have been placed in the 10th District and Iron County be placed in the 8th District, thus resulting in a more equal population as between the 8th and 10th Districts. Did your committee consider such a possibility? A I don't think so. We considered many possibilities and that is what I was trying to say a minute ago. You've got 197 people over there and any of these counties could be shifted over one to the other and make very little difference, make a little difference in population. This is what we wound up with after discussing many, many suggested changes by various members of the legislature. But we were guided principally by keeping the population within a reasonable range, which we felt we did by 2% over and under, or approximately.

MR. WOOD: Fine. I am through. Mr. Collins or Mr. Preisler, you can examine.

CROSS-EXAMINATION

by Mr. Preisler:

Q I am most concerned about when you got all this information, Mr. Avery, for example, there are various tables of population and several maps which you say the commit-

tee had those in its hands approximately before the first of March. A Mr. Preisler, it's my honest opinion we did have those on or about the first of March. It would probably be during the month of March. There is no definite date. I notice one of them says February 19. We got it very soon after the latter part of February or about that time would be my guess. That is the St. Louis and St. Louis County figures. Now, if I remember correctly, it was another week or two—there was a delay in getting the Kansas City and Jackson County figures, but it would have been during the month of March, I am quite sure.

Q Did you ever ascertain or attempt to get more accurate figures for precincts of St. Louis County? A Would you strike that question and let me continue with the answer to your other question?

Q O.K. A To be more specific on March 24th I got the information on Jackson County outside of Kansas City. I do have that particular date, March 24th. So that would just about pinpoint them. We got them all within a week of that time.

Q My question is this: did the committee attempt to get census bureau population figures for the precincts of the townships of St. Louis County? A Of St. Louis County?

Q Yes. A I am quite sure we did, but I don't think we ever got any specific figures on those precincts.

Q Did the committee ever seek to get these precinct populations from the Census Bureau? A Not from the Census Bureau. Some members of the committee did.

Q From the Census Bureau? A Mr. Johnson of St. Louis County had figures and I am quite sure he got them from the Census Bureau. I know that Mr. Young in the city of St. Louis got figures from the Census Bureau.

Q But I am speaking now of the precincts of St. Louis County, not the townships of St. Louis County. There are, as you know, 1500, more or less, precincts in St. Louis County. These are precincts now of the townships. A I am going to answer that this way and it's only my best recollection, that there was no census figures for precincts as they existed in 1966.

Q But did the committee make any attempt to get them from the Census Bureau? A I can only say that I did not because I had appointed subcommittees and they came in with certain figures.

Q But they didn't bring back official Census Bureau figures of the precincts? A No, sir, not that I recall.

MR. PREISLER: All right, thank you.

MR. WOOD: I neglected to offer Defendants' Exhibit A into evidence and I now do so.

MR. COLLINS: We have no objection.

MR. PREISLER: I offer an objection on the ground the figures in a number of instances are incorrect.

REDIRECT EXAMINATION

by Mr. Wood:

Q Senator Avery, I show you Defendants' Exhibit D, for identification, and ask you to identify that, please. A That is a map of the county, the City of St. Louis and St. Louis County, the townships of St. Louis County have indications of populations set out in red figures. This map was received by me from Senator Jones of St. Louis County and was in this present condition when I received it.

Q Now, was this Defendants' Exhibit D received by you during or prior to the Senate committee on Reapportionment deliberations on Senate Bill No. 182? A It was during

the deliberations while it was still in committee and at about the same time these maps all came within a few days of each other, so we'll say March 24th approximately.

Q Senator Avery, these populations, or these numerals that are shown in red, for what is apparently each township in St. Louis County, these were on the map when you received it? A They were on the map when I received it and those are the figures we adopted.

Q That you used? A Yes, sir.

Q Did you personally make any effort to verify the accuracy of these figures as populations of townships? A Yes, I had a piece of paper, a sheet of paper which was furnished by the Census Bureau setting out, and which was given to me by Senator Young, however, setting out the populations in the various townships, and I think these do conform.

Q This paper you refer to, the one that Senator Young gave you, do you know whether that paper came from the Census Bureau? A I could not say I know. It was so represented to me.

Q By Senator Young? A Yes.

MR. WOOD: Defendants' Exhibit D if offered into evidence.

MR. COLLINS: We have no objection.

MR. PREISLER: I think it should state the source of those figures. I think we are agreed where they came from, are we not?

MR. WOOD: Will the parties agree that the numerals within the township, the red numerals within the townships on Defendants' Exhibit D correspond with the populations of the townships as they are reflected in stipulated Exhibit No. 23?

MR. COLLINS: Yes, we will so agree.

MR. PREISLER: That is agreed.

MR. COLLINS; I take it with that statement, Mr. Preisler, you have no objection to Exhibit D?

MR. PREISLER: That is correct.

CROSS-EXAMINATION

by Mr. Collins:

Q Senator, when were you first elected to the Missouri State Senate? A In 1956.

Q And have you continuously been a member of that body since that date? A Yes, sir.

Q Prior to that time, have you had any experience in the legislature? A I had been in the House three terms, elected there in 1950.

Q So you have been a member of the Missouri Legislature continuously since 1950? A Yes, sir.

Q Now, during your tenure in the Senate, did you have any experience in connection with the districting or apportionment of the Congressional districts in 1961? A I was chairman of the Reapportionment Committee that year.

Q And did you have any experience with the reapportionment of 1965? A I was again chairman of that committee.

Q And, of course, chairman in 1967? A In 1967, yes, sir.

Q So you have had long experience not only in the legislature but specifically with reapportionment? A Yes.

Q Now, as I understand it, in the legislature, of course, and any bill, particularly apportionment, but any bill you have the practical problem of getting it passed? A Yes, sir; that is the problem.

Q Whatever happens over there, nothing counts, as far as law is concerned, unless it is passed? A That is correct.

Q And this 1967 Congressional Redistricting Act is, as I understand it, in your opinion, the best bill in terms of minimal variations that could be passed and is the product of a lot of hard work and debate and work on the part of the legislature. A It certainly is, and it represents a lot of thoughts, a lot of different ideas from all parts of the state of Missouri.

Q And in all of those debates and the drafting of the bill and the amending of it and the discussions of it, I understand from your testimony, I want to make sure this is correct, that the primary consideration was equality of population, amongst and between the various districts.

MR. PREISLER: Objection on the grounds this would be a conclusion of the witness. He could speak for himself but he can't speak for the other great numbers in the legislature.

WITNESS AVERY: I would say as far as I am personally concerned that was the primary consideration and the secondary consideration and very close to the primary, was trying to get as regular shaped districts as possible.

Q (by Mr. Collins) Well, it is your opinion, Senator Avery, that this was the primary consideration of the legislature as a whole?

MR. PREISLER: Objection again.

WITNESS AVERY: My answer to that would be that the members of the legislature recognized the fact at this time the legislature had to give prime consideration to equality in population as nearly as it could.

Q (by Mr. Collins) And in your opinion, they did? A And they did so; yes, sir.

MR. COLLINS: That is all, thank you.

REDIRECT EXAMINATION

by Mr. Wood:

Q Senator Avery, Mr. Preisler has asked you about populations for the precincts and the townships in St. Louis County. Did your committee at any time contemplate splitting the townships in St. Louis County? A No.

Q Insofar as the Congressional Districts were concerned? A No, our committee did not.

CROSS-EXAMINATION

by Mr. Preisler:

Q Mr. Avery, they actually have split the townships.

MR. WOOD: I said did your committee—

Q (by Mr. Preisler) Your committee only used whole townships at any time? A Where we were considering it in committee. Now, when this bill was reported out of the committee and went to the Senate, then it never came back to our committee again, you see.

Q I am merely trying to find out whether your committee had before it official census data for the precincts of these townships because the townships were split and the question was how they got the population of the split township. A Now, my recollection of it is, in the Senate committee, we did not split any township and we did not have the population data of the precincts because we did not have them before us.

MR. PREISLER: I see.

RE-DIRECT EXAMINATION

by Mr. Wood:

Q Senator Avery, in your bill as originally introduced, did you calculate as best you could the populations of the respective districts, and if so, could you tell us what those were? A Now this is just the original bill as I introduced it. Shall I give you the figures?

Q Would you please? A As I have them here, District No. 1, 423,712; District No. 2, 444,462; District No. 3, 448,824; District No. 4, 428,113; District No. 5, 430,412; District No. 6, 427,710; District No. 7, 428,173; District No. 8, 426,260; District No. 9, 427,313; and District No. 10, 432,281.

Now let me explain again as I did before, that these figures are based solely on the 1960 populations of the townships, wards and what have you. They are based on those 1960 figures. That was before we got any of the revised figures after the changes in townships and wards.

MR. PREISLER: You mean this is your original 182 bill?

WITNESS AVERY: That is the original 182 bill.

Q (by Mr. Wood) Utilizing the 1960 wards and townships, St. Louis County and St. Louis City? A That is my notation on the bill and that was made at the time, based on the 1960 composition and census of St. Louis wards and St. Louis County townships.

MR. WOOD: I have no further questions.

MR. COLLINS: I have none.

RECROSS EXAMINATION

by Mr. Preisler:

Q What was the date of that bill approximately? A That bill was introduced and read the first time on January 26.

Q Those figures were compiled at that time? A I would say a few days before that; yes, sir.

MR. PREISLER: No further questions.

(Signature waived.)

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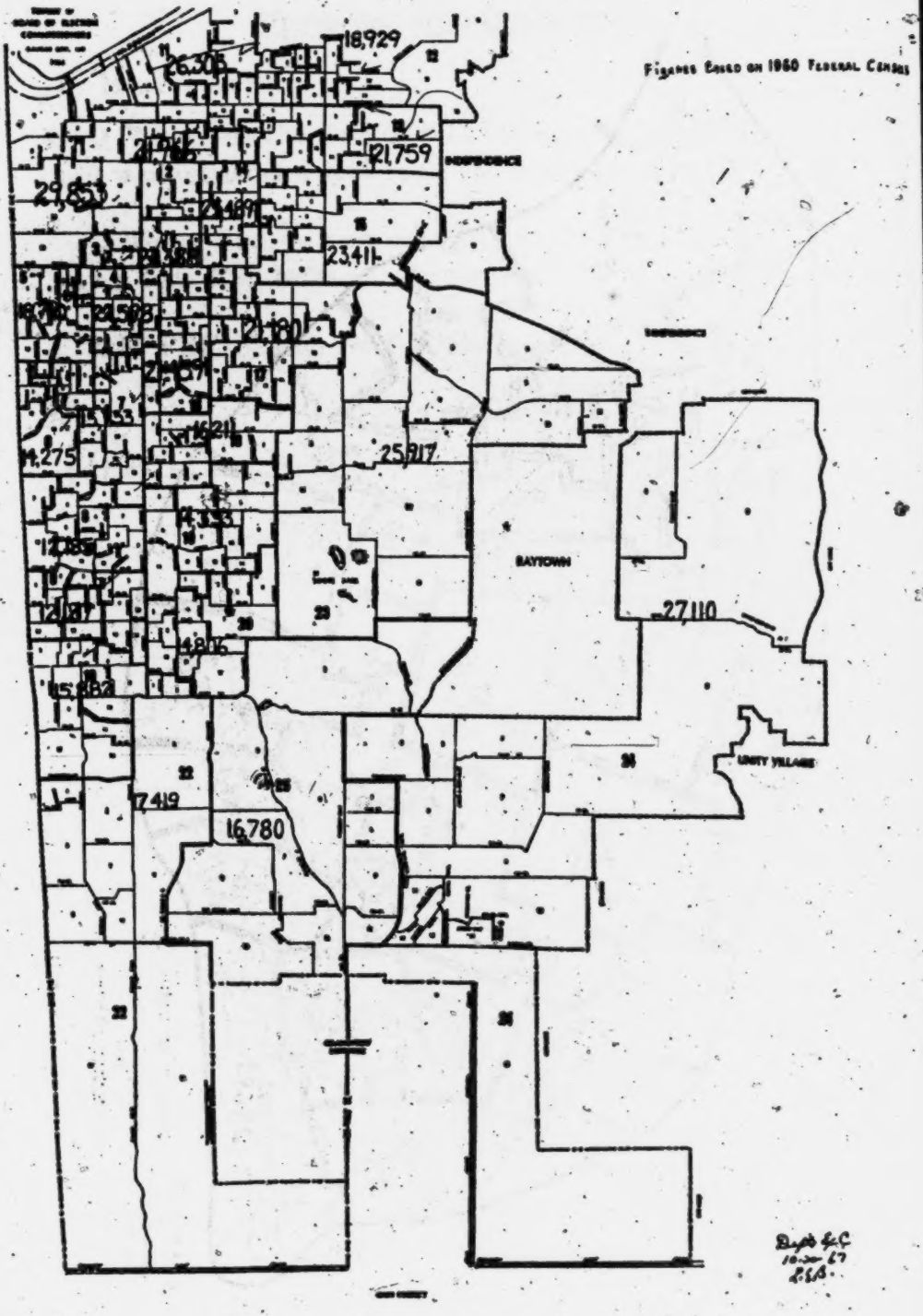
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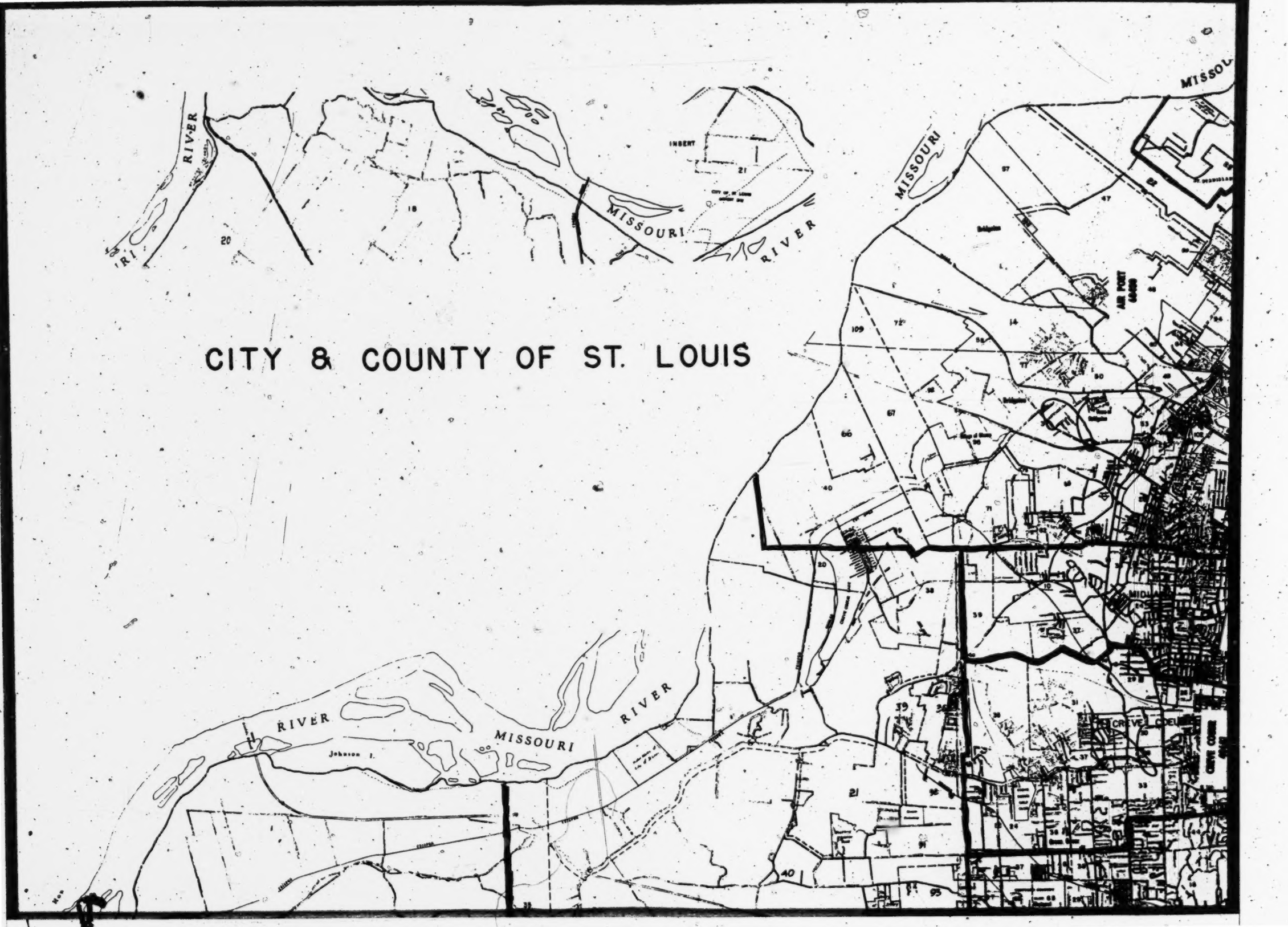
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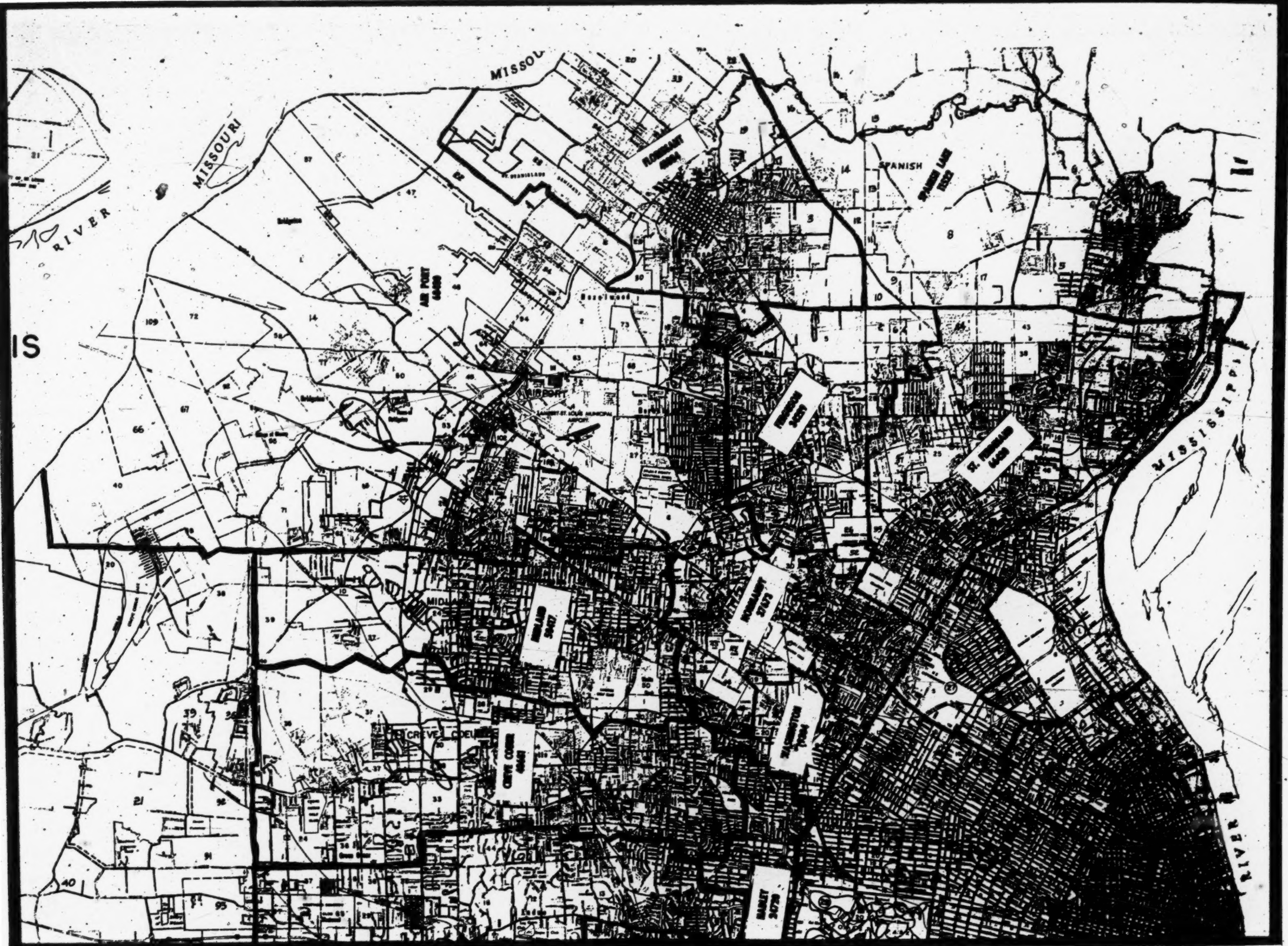
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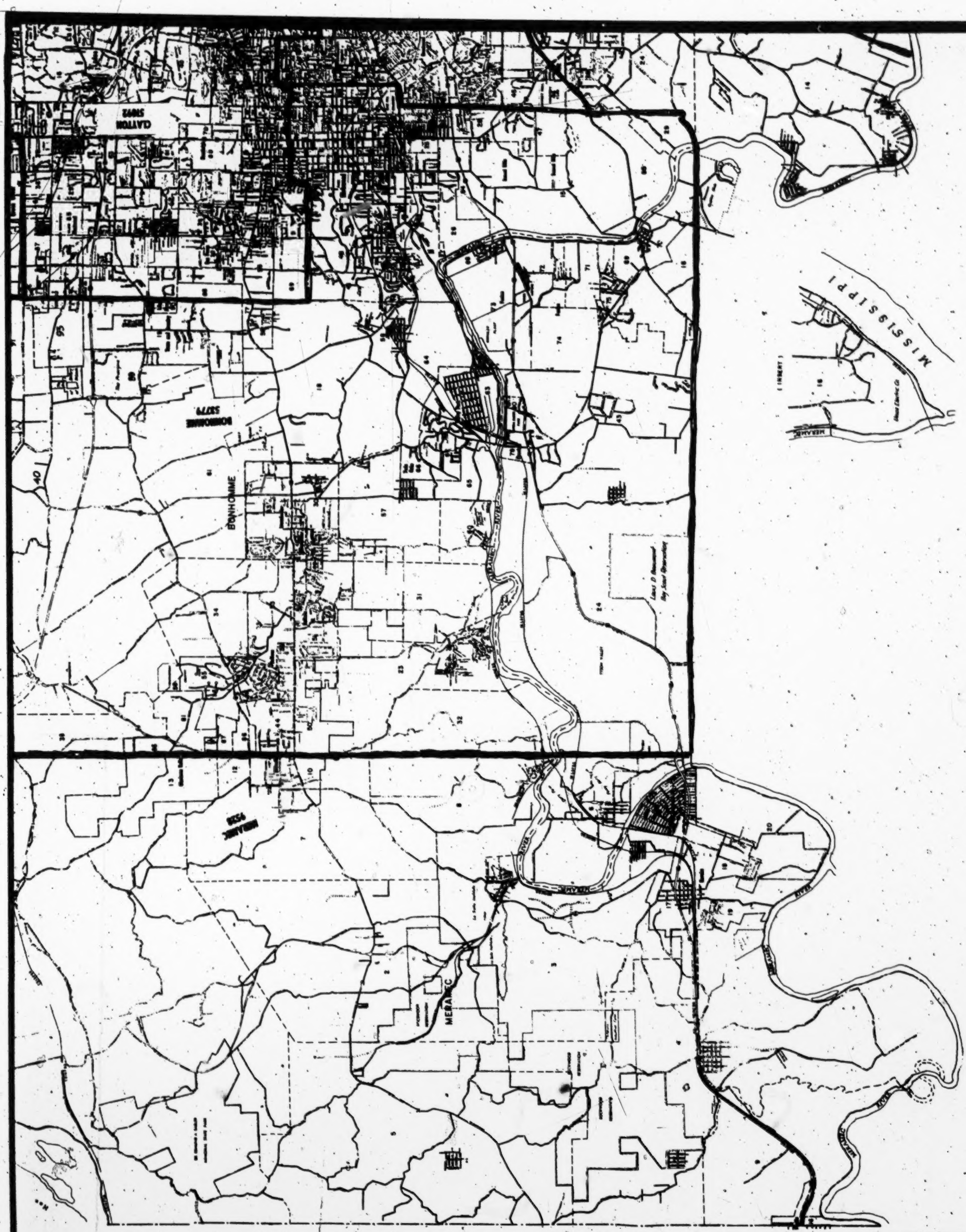
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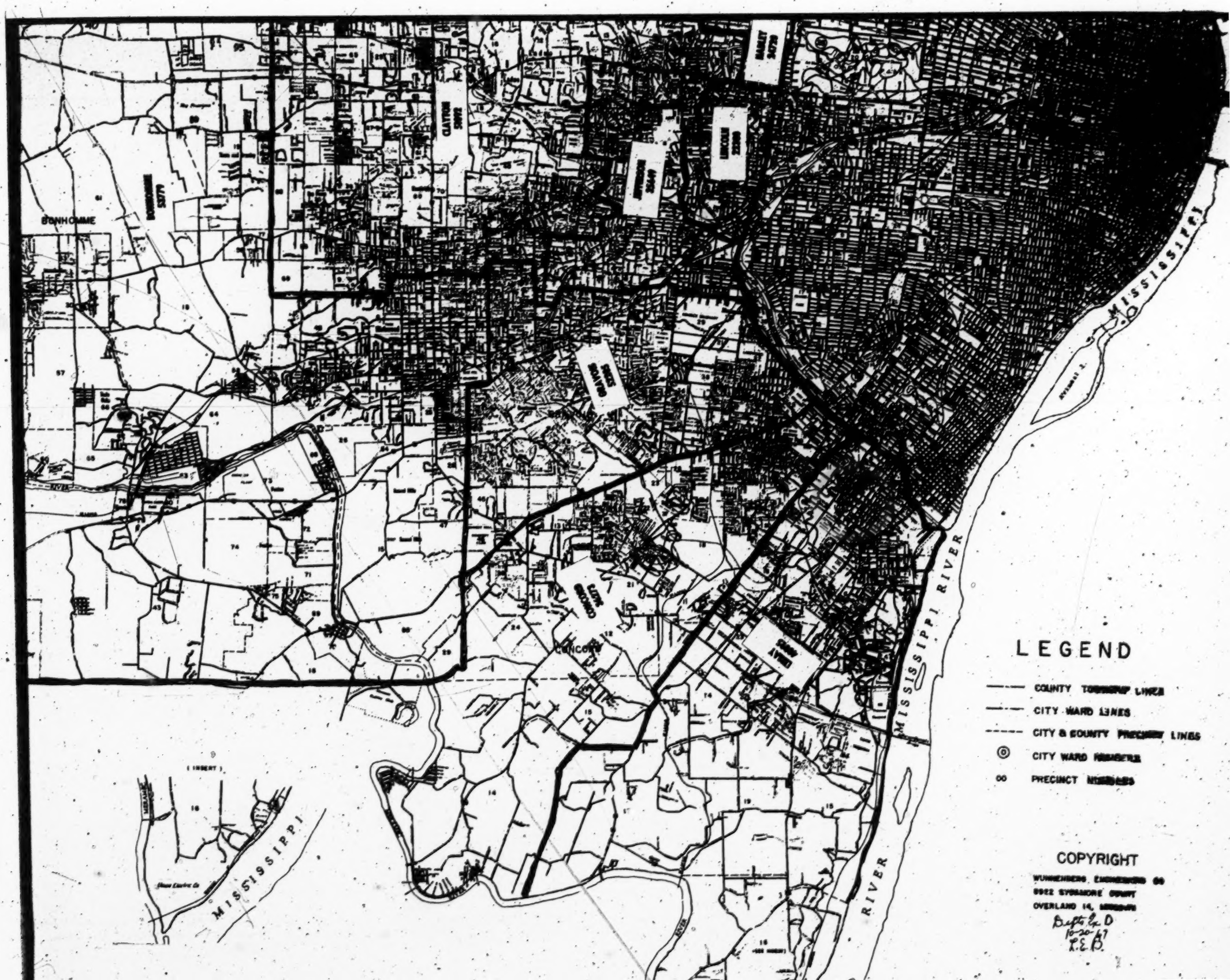
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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

MOTION TO STAY ORDER, JUDGMENT AND DECREE PENDING APPEAL.

Defendants move the court as follows:

1. The court's opinion, judgment and decree issued in this cause on December 29, 1967, found that the 1967 Missouri Congressional Redistricting Act, House Substitute for Senate Committee Substiture for Senate Bill No. 182, 74th General Assembly of the State of Missouri, did not comply with Article I, Section 2, of the Constitution of the United States, and was therefore, unconstitutional and void.

2. On January 12, 1968, defendants filed in this court a Notice of Appeal to the Supreme Court of the United States from the order, judgment and decree entered in this action on December 29, 1967.

3. The imminent pendency of elections for the office of Representative in Congress in 1968 necessitates a stay of the court's judgment and decree entered on December 29, 1967, and a suspension of its orders entered therein.

WHEREFORE, Defendants pray that the court enter its order staying its judgment and decree, together with its orders issued therein on December 29, 1967, pending final disposition of the appeal herein to the Supreme Court of the United States.

Respectfully submitted,

NORMAN H. ANDERSON
Attorney General

/s/ THOMAS J. DOWNEY
First Ass't. Attorney General

/s/ LOUREN R. WOOD
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri
Attorneys for Defendants.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

STATEMENT IN SUPPORT OF DEFENDANTS' MOTION TO STAY ORDER, JUDGMENT AND DECREE PENDING APPEAL.

This court's opinion and judgment entered on December 29, 1967, found that the 1967 Congressional Redistricting Act does not comply with the requirements of Article I, Section 2, of the Constitution. The 1965 Act was declared by this court to be unconstitutional in what has been referred to for purposes of identification as Preisler II. This decision was upheld by the Supreme Court of the United States. Under the 1965 Act the largest congressional district contained approximately 20 per cent more people than the smallest district.

The 1967 Act was a bona fide effort by the General Assembly to comply with the requirements of Article I, Section 2, of the Constitution as construed by Preisler II. There is not a scintilla of evidence or information which indicates that the legislature was acting in any manner other than good faith performance to comply with the Constitution in drafting the 1967 Act. No specific guidelines were outlined in Preisler II from which the legislature could proceed with certain knowledge that the final product of the legislative action would meet constitutional requirements. After a long drawn out legislative give and take upon this subject a bill was enacted in which the largest congressional district contained only 6 per cent more population than the smallest congressional district. No defiance of the court is in any way indicated in this legislative product, and it is nowhere ob-

served that the legislature in its deliberations set variances in numbers or percentages above and below an average ideal district as its goal. It is true that the results of different plans and amendments to plans were measured in percentage terms in the legislative process for the purpose of the legislature informing itself as to whether or not the resulting districts appeared to be within the realm of reason insofar as population equality is concerned. This emphasizes the bona fides of the legislative attempt to comply with the judicial mandate.

The legislature has now been told that its efforts did not come up to the constitutional standards of population equality which the court considers to be necessary. The defendant do not agree with this construction of Article I, Section 2 of the Constitution, and an appeal has been taken to the Supreme Court of the United States. No apportionment case of any kind has been before the Supreme Court of the United States for decision with population variations as minor as those reflected by the 1967 Act. Wesberry v. Sanders was decided in 1964, and the Supreme Court has never implemented this decision by accepting any subsequent case for argument and opinion. See Rockerfeller v. Wells, No. 691, Dec. 18, 1967, —— U.S. ——, dissent of Justice Harlan. The population variations condemned in Wesberry v. Sanders and the population variations in the 1967 Missouri Act are poles apart. The experience of the Missouri General Assembly in 1967 demonstrates a dramatic and urgent need for the Supreme Court of the United States to consider further and issue an opinion directly upon the subject of congressional redistricting in the context of this far different factual situation in order that Missouri and all of the states may have guidelines which are definite and certain in the establishment of congressional districts. The need for such guidelines is demonstrated by the fact that many district

courts have found congressional redistricting plans with variations much greater than those in the Missouri 1967 Act to be valid. Therefore, this appeal is being pursued with extraordinary care and diligence in the anticipation that the case will be accepted by the Supreme Court for argument and opinion.

Missouri law requires the prospective candidates for Congress to file a declaration of their candidacy for the primary election not later than April 30, 1968. A special session of the Missouri legislature convenes on January 12, 1968, for the primary purpose of appropriating funds for the operation and expenses of the state government for the fiscal year beginning July 1, 1968. This special session is required by the Constitution to complete its work within 60 days. The subject of congressional redistricting is being submitted by the Governor to the special session for its consideration. The Constitution provides that laws enacted at such a special session will take effect 90 days after the session closes. Therefore, any congressional redistricting act passed by the special session can not take effect by April 30, 1968, unless an emergency clause is attached to such law. An emergency clause requires a two-thirds vote of the constitutional membership of each House of the General Assembly. The 1967 Act was able to muster a one vote constitutional majority for passage in the House. Therefore, it is probable that any legislation on congressional redistricting during the special session may have great difficulty in finding a two-thirds vote support for an emergency clause.

The judgment of December 29, 1967, retains jurisdiction of the subject matter. Any congressional redistricting act that may be passed in the special session, even though it may carry an emergency clause, will be subject to the approval of this court before prospective candidates can pursue election under the new districts. The stringent requirements for

congressional districts as provided in this court's opinion of December 29, 1967, (if any better plan is brought to the attention of the legislature, the plan adopted is presumptively unconstitutional) leads defendants to refrain from predicting that any plan enacted will gain judicial approval.

Assuming that legislative efforts to enact a new congressional redistricting law fail, or assuming that this court cannot give its approval to a new law, the court will draw new districts. It is further assumed that the court would want to permit all of those interested to be heard and to offer evidence before the court established congressional districts. Obviously the judicial creation of congressional districts must of necessity by the nature of the subject matter be time consuming.

The practical necessities attendant to the conduct of an election demonstrate the extreme difficulty or impossibility of an orderly and intelligently conducted election for congressmen in the State of Missouri in 1968 under the many uncertainties which have been discussed.

Defendants are pursuing this complicated, delicate and sensitive appeal with diligence and urgency. Time is required to prepare the record. Defendants' jurisdictional statement must be prepared with the utmost care and thoroughness. If the court should summarily affirm the lower court upon consideration of the jurisdictional statement and a motion to affirm, the case may be decided prior to April 30, 1968. However, if the court notes probable jurisdiction, orders the record printed, provides for filing of briefs and dockets the case for argument, it is improbable that the case can be heard prior to the October Session in 1968.

The court's decision as to whether or not a stay should be granted must be made in the exercise of its equitable discretion. See Eagle Pitcher Co. v. Sperry (W.D.Mo. 1964),

227 F.Supp. 153; Taylor v. Board of Education (S.D.N.Y. 1961), 195 F.Supp. 231. If the factual situation as demonstrated by the 1967 Congressional Redistricting Act convinces the court that the election of members of congress under that Act will be accomplished at the cost of undue, serious and substantial dilution of voting rights in the more populous congressional districts, then the court should deny this request for a stay. However, in view of the fact that the population of the largest district is only 6 per cent in excess of the population of the smallest district under the 1967 Act, it is defendants' firm conviction that undue, serious and substantial dilution of the voting rights of voters in the largest district will not result if elections are permitted to be conducted in 1968 under the 1967 Act. This conviction apparently is shared by one member of this court who dissented from the decision upon the grounds that he considered the population disparities to be minor and constitutionally permissible. It may be that the Supreme Court of the United States will support the majority view that these population variations are constitutionally impermissible. However, the doubt and uncertainty surrounding the correct application of constitutional principles to the 1967 Act, coupled with the obviously minor (almost infinitesimal) vote dilution inherent in the Act, lends stout support to the exercise of equitable discretion by this court in granting defendants motion to stay.

It is respectfully submitted that defendants' motion to stay the judgment and decree, and to suspend the orders set

forth therein, pending disposition of the appeal by the Supreme Court of the United States should be granted.

Respectfully submitted,

NORMAN H. ANDERSON
Attorney General

/s/ THOMAS J. DOWNEY
First Ass't. Attorney General

/s/ LOUREN R. WOOD
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri
Attorneys for Defendants.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

NOTICE OF APPEAL FROM FEDERAL COURT, CIVIL CASE

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice is hereby given that the Secretary of State of Missouri and the Attorney General of Missouri, the defendants above named, hereby appeal to the Supreme Court of the United States from the final judgment and decree (including the opinion of court and the appendices attached thereto incorporated by reference in the judgment and decree), entered in this action on December 29, 1967.

This appeal is taken pursuant to 28 U.S.C., Section 1253.

II. The clerk will please prepare a transcript of the entire record in this cause for transmission to the clerk of the Supreme Court of the United States.

III. The following questions are presented by this appeal:

I.

The opinion, decision and judgment appealed from erroneously construed Wesberry v. Sanders, 376 U.S. 1 (1964) by finding that congressional districts are not as equal in population as practicable if any other plan proposed to the legislature or to the court can result in districts with smaller population variations.

II.

The opinion, decision and judgment appealed from is in

conflict with Wesberry v. Sanders, supra, Reynolds v. Sims, 377 U.S. 533 (1964), Swann v. Adams, 385 U.S. 440 (1967), and Preisler v. Secretary of State of Missouri, 257 F.Supp. 953 (W.D.Mo. 1966), aff'd. sub nom. Kirkpatrick v. Preisler, 385 U.S. 450 (1967), by rejecting the principle that population variations between congressional districts which are de minimis are constitutionally permissible.

III.

The opinion, decision and judgment appealed from has misconstrued the burden of proof principles set forth in Swann v. Adams, supra, and Kilgarlin v. Hill, 386 U.S. 120 (1967), by holding that minor variations in the population of congressional districts are constitutionally impermissible in the absence of competent and substantial evidence justifying the variations.

IV.

The opinion, decision and judgment appealed from erroneously rejected the authority of Connor v. Johnson, Civil No. 3830, S.D.Miss., Sept. 28, 1966, aff'd. 386 U.S. 483, (1967) which was relied upon by appellants in support of the constitutionality of the 1967 Missouri Congressional Redistricting Act.

V.

The opinion, decision and judgment appealed from is erroneous and in conflict with Reynolds v. Sims, supra, Swann v. Adams, supra, and Kilgarlin v. Hill, supra, in holding that in establishing congressional districts no allowance can be made for legislative interplay and that any population deviations from absolute mathematical equality between congressional districts attributable to political compromise within the state legislature is arbitrary and discriminatory and invalidates such legislation. The opinion renders nugatory considerations other than population which may be recog-

nized by the legislature in drawing congressional districts as provided by Reynolds v. Sims, supra, Swann v. Adams, supra, and Kilgarlin v. Hill, supra.

VI.

The opinion, decision and judgment appealed from erroneously finds that there is an overvaluation and overweight of votes in the rural geographic areas as contrasted with the votes in metropolitan areas in the composition of the congressional districts. This conclusion and others are based, to some extent, on inaccuracies in the Findings of Fact.

VII.

The opinion, decision and judgment appealed from erroneously found that the 1967 Missouri Congressional Redistricting Act, House Substitute for Senate Committee Substitute for Senate Bill No. 182, 74th General Assembly of the State of Missouri, does not comply with Article I, Section 2, Constitution of the United States and is unconstitutional and void. Population was the principal factor considered by the legislature in enacting this law, and the minor variations in the populations of the resulting congressional districts fully comply with the constitutional requirement that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's. The 1967 Missouri Congressional Redistricting Act complies with Article I, Section 2, Constitution of the United States, is in harmony with all applicable constitutional principles and is valid.

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO STAY ORDER, JUDGMENT, AND DECREE, PENDING APPEAL.

Plaintiffs oppose the motion of Defendants which prays that the Court "enter its order staying its judgment and decree, together with its orders issued therein on December 29, 1967, pending final disposition of the appeal herein to the Supreme Court of the United States."

The subject of congressional redistricting has been submitted to the General Assembly by the Governor for the special session now in session which convened on January 12, 1968. This special session is limited to sixty days.

This same General Assembly considered congressional districting at its regular session in 1967 and enacted the Act now held to be unconstitutional and void by the order, judgment, and decree of this Court. Having thus previously quite extensively considered the subject, it seems reasonable that very little time would be needed by the General Assembly to make the necessary adjustments in the district populations to bring the district populations to very low minimal variations or differences.

The last filing date for candidates for the office of Representative in Congress in Missouri is April 30, 1968. The date of the primary election is August 6, 1968. If the General Assembly promptly passes an Act (with emergency clause) which has the approval of the Governor, and which meets the constitutional requirements as construed by the courts,

there would be ample time for the filing of candidates' declaration papers long before the April 30th deadline.

Concerning the emergency clause, it is inconceivable to Plaintiffs that the General Assembly, having passed a congressional districting Act by the required majority, would attempt to defeat the majority will by stubbornly refusing to render the Act immediately effective by failing to pass the necessary emergency provisions.

However, even if the General Assembly passed the Act on the last day of the special session, March 11, 1968, without an emergency provision, and the Governor approved the Act, the Act would become effective ninety days thereafter, June 9, 1968. Since the primary election is scheduled to take place about two months thereafter, the Secretary of State might prospectively accept declaration of candidacy filings through April 30, 1968 as the statutes now provide, since the districts would be in effect at the time of the primary election.

Defendants in their "Statement in Support of Defendants' Motion", on page 5 thereof, urge the Court to exercise its equitable discretion. In the same lengthy paragraph, Defendants simply re-argue one of the principal issues of this case, saying, "If the factual situation as demonstrated by the 1967 Congressional Redistricting Act convinces the court that the election of members of congress under the Act will be accomplished at the cost of undue, serious and substantial dilution of voting rights in the more populous congressional districts, then the court should deny this request for a stay." Plaintiffs contend that the Court has already made this determination and, therefore, the stay should be denied as a matter of course.

Defendants in the same paragraph further state, "However, the doubt and uncertainty surrounding the correct ap-

plication of constitutional principles to the 1967 Act, coupled with the obviously minor (almost infinitesimal) vote dilution inherent in the Act, lends stout support to the exercise of equitable discretion by this court in granting defendants' motion to stay."

Defendants apparently hope to influence the Court to exercise its equitable discretion by the use of such exaggerated terms which simply cannot be validly applied to such population differences between adjacent districts as, for example, the 25,802 (between the 8th and 4th districts) and the 21,655 (between the 8th and 10th) when whole counties of about 10,000 population could easily be transferred from one district to an adjacent district and make each closer to population equality. Plaintiffs contend that population differences of such magnitude, when they could easily be greatly diminished, do not establish a sound basis for the exercising equitable relief under the factual timing circumstances now existing.

WHEREFORE, Plaintiffs pray that Defendants' Motion referred to herein be overruled and the stay sought by Defendants be denied.

Respectfully submitted,

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

INTERVENOR-DEFENDANTS' NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice is hereby given that F. V. Heinkel, R. J. Rosier, W. W. Beckett, A. D. Sappington, L. O. Wallis, Miller Hern, Herman Hetlage, Herman Kertz, Turpin Youtsey and Glen Myers, the Intervenor-Defendants above named, hereby appeal to the Supreme Court of the United States from the final judgment and decree (including the opinion of the court and the appendices, findings of fact, conclusions of law, attached thereto and incorporated by reference in the judgment and decree), entered in this action on December 29, 1967.

II. This appeal is taken pursuant to 28 U.S.C., Section 1253.

III. The clerk will please prepare a transcript of the entire record in this cause for transmission to the clerk of the Supreme Court of the United States.

IV. The following questions are presented by this appeal:

1.

Does the Missouri 1967 Congressional Redistricting Act (Sections 128.202 to 128.303 V.A.M.S., 1967) under which the average variation from ideal is 1.6%, the ratio of the largest to the smallest district is 1.06% to 1, 59% of the total population of the state is required to elect a majority (6 out of 10) of the congressional delegation, the largest variation from ideal was 3.13% above (the district which contains approximately 35,000 soldiers at Fort Leonard Wood, the state capitol at Jefferson City and approximately

17,000 students at the University of Missouri at Columbia) and the lowest was 2.84% below, one-half of the districts are above ideal and one-half of the districts are below ideal, 7 of the 10 districts are within 1.88% of ideal, violate Article 1, §2 of the United States Constitution as construed in Wesberry v. Sanders, 376 U.S. 1 (1964)?

2.

In Connor v. Johnson, No. 3830 decided by a three judge court in the Southern District of Mississippi on September 28, 1966, and affirmed by the Supreme Court at 386 U.S. 483 (1967), the average variation from the ideal population per district, the disparity ratio and the maximum and minimum variations were greater than those which resulted from Missouri's 1967 Act. That being true, does the judgment appealed from herein result in the application of a double standard by the Federal Judiciary? That is, that which is permissible in Mississippi is not permissible in Missouri?

3.

Does the doctrine of de minimis apply to congressional reapportionment, as suggested by the lower court herein in Preisler II, 257 Fed. Supp. 953 (1966) and, if so, do the population variations resulting from the Missouri 1957 Act violate that doctrine?

4.

Is there a presumption that the Missouri 1967 Act is constitutional and do those asserting unconstitutionality have the burden of demonstrating it?

5.

The undisputed testimony of the officers of the legislature was that the Act, as passed, apportioned the population as nearly equal as is "practicable", from the standpoint of getting an Act passed. There was no evidence to the contrary, although plaintiff-appellees served notice that they

would introduce evidence at the hearing they elected not to do so. This being true and the average variation from ideal being only 1.6%, the disparity ratio being only 1.06% to 1, 7 of the 10 districts being within 1.88% of ideal and the maximum variations being 3.13% above and 2.84% below, was it proper for the lower court to declare the Act unconstitutional?

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351-2123
Attorney for Intervenor-Defendants.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

MOTION TO STAY ORDER, JUDGMENT AND DECREE PENDING APPEAL.

Come now F. V. Heinkel, R. J. Rosier, W. W. Beckett, A. D. Sappington, L. O. Wallis, Miller Hern, Herman Hetlage, Herman Kertz, Turpin Youtsey and Glen Myers, Intervenor-Defendants, and state to the court:

1. That on January 22nd, 1968, they filed in this court a Notice of Appeal to the Supreme Court of the United States from the judgment, decree and orders entered in this action by this court on December 29, 1967.

2. That said Intervenor-Defendants desire a stay on appeal.

3. That under Missouri law the deadline for filing for candidacy for election to Congress is April 30, 1968; that some persons had filed for candidacy for election to Congress prior to this court's judgment, decree and orders of December 29, 1967; that other people are now desirous of filing their candidacy for election to Congress but are unable to do so because of this court's judgment, decree and orders, and also because they do not know in which Congressional District they reside; that the people of Missouri do not now know in which Congressional District they reside or will vote, or who will or might be candidates of any particular party for election to Congress in their district.

4. The court's judgment, decree and orders of December 29, 1967, held the Missouri 1967 Congressional Redistricting Act unconstitutional and void; that although the Missouri Legislature is now in special session and is considering

various bills concerning the re-establishment of the Congressional Districts of Missouri, under the Missouri Constitution it will take a two-thirds vote of both houses of the Legislature in order to make any bill passed effective prior to 90 days after the adjournment of the Legislature, which adjournment will not be until the 12th day of March, 1968.

Wherefore, Intervenor-Defendants move the court to stay its judgment, decree and orders entered herein on December 29, 1967, until after the 1968 Congressional elections, November 4, 1968.

Respectfully submitted,

/s/ DAVID COLLINS
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351-2123
Attorney for Intervenor-Defendants.

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

(TITLE OMITTED IN PRINTING)

INTERVENOR-DEFENDANTS' SUGGESTIONS IN SUPPORT OF THEIR MOTION TO STAY ORDER, JUDGMENT AND DECREE PENDING APPEAL.

The Secretary of State has no authority to accept filings of candidacy for Congress after April 30, 1968. Plaintiffs' suggestion that if a new redistricting act is passed, and if it is passed by a two-thirds majority (with an emergency clause), and if the Governor signs it, that the Secretary of

State could "prospectively accept" declarations of candidacy is wholly without support in law, and, in fact, would put the Secretary of State in contempt of this court for a direct violation of this court's order of December 29, 1967, which order directed that "no further filings be accepted" under the 1967 Act. There is no other Act under which they could be accepted.

The harm which will result if this court's judgment, decree and orders are not stayed is of much greater magnitude than the harm that will result by holding the 1968 election under the 1967 Act, even under the views expressed by the majority opinion. It is respectfully suggested that in the interest of justice the motion to stay until the 1968 election be sustained.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION